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ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 156

DATE: Wednesday, November 8th, 1989

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Wednesday, November 8th,
1989, commencing at 8:30 a.m.

VOLUME 156

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



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A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT
	BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. N. KLEER)	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE)	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD)	
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY

APPEARANCES: (Cont'd)

MR. R.L. AXFORD

CANADIAN ASSOCIATION OF
SINGLE INDUSTRY TOWNS

MR. M.O. EDWARDS

FORT FRANCES CHAMBER OF
COMMERCE

MR. P.D. McCUTCHEON

GEORGE NIXON

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

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1 ---Upon commencing at 8:45 a.m.

2 THE CHAIRMAN: Good morning. Please be
3 seated.

4 Just before we get going, Ms. Murphy, we
5 have just got a couple of minor things. We should be
6 in a position to distribute the Board's ruling on the
7 procedural matters later today. So as soon as we have
8 them ready - we have to wait for something to be faxed
9 up from Toronto - we will distribute it.

10 The second thing the Board wants to do is
11 to remind the parties that the statements of issue with
12 respect to Baskerville are due tomorrow. And for those
13 parties who haven't submitted them, the ruling that the
14 Board will be distributing today with respect to the
15 scoping procedures - we can give you a bit of an
16 advanced preview to tell you that nothing has changed
17 on that part of the ruling from the draft ruling that
18 was issued on October 25th - so that those parties who
19 haven't submitted statements of issue will require
20 leave from the Board, et cetera.

21 The third thing that we want to mention
22 is, we want to get an idea before we start as to how
23 long the parties, at least the ones who are present,
24 expect to be in cross-examination.

25 We realize that you haven't heard the

1 direct evidence yet, but there has been an indication
2 from the Ministry of Natural Resources that they don't
3 expect to be more than a day and a half; is that
4 correct?

5 MS. MURPHY: Yes, Mr. Chairman, that's
6 correct.

7 THE CHAIRMAN: So that we would like an
8 idea based on that and based on the witness statements
9 you have already seen as to how long the various
10 parties might be in cross-examination, and perhaps we
11 can just go around the room.

12 Mr. Lindgren?

13 MR. LINDGREN: We expect to be
14 approximately a day and a half.

15 THE CHAIRMAN: Mr. Cassidy?

16 MR. CASSIDY: Mr. Chairman, both Ms.
17 Cronk and I will be cross-examining and we have
18 conferred and we think approximately half a day. It
19 may run a bit more or a bit less, but half a day would
20 be approximately the time.

21 THE CHAIRMAN: Okay. Ms. Seaborn?

22 MS. SEABORN: Half a day, Mr. Chairman.

23 MS. MURPHY: And, Mr. Chairman, I have
24 consulted with the other parties, and just for your
25 information, I was advised by Mr. Edwards and Mr. Hanna

1 both that they expected to be a day or perhaps less. I
2 asked them for a very general indication.

3 And I also spoke as well to Ms.
4 Bair-Muirhead and Ms. Kleer and both of them indicated
5 that they thought they might be, between them, a day or
6 perhaps up to a day each. Again, I just asked them for
7 a very general indication.

8 THE CHAIRMAN: Thank you. So we are
9 looking at five and a half to six days, we expect, for
10 the cross-examinations. Okay.

11 MS. MURPHY: Mr. Chairman, there are two
12 witnesses on this panel that have not been previously
13 sworn, Dr. MacLean and Mr. Tworzyanski, and I would
14 suggest, first of all, that those two witnesses be
15 sworn.

16 THE CHAIRMAN: Okay. Gentlemen, would
17 you come forward, please.

18 MS. MURPHY: Come right up to the front.

19 JOHN EDWARD OSBORN,
20 JOHN CARY,
DAVID GORDON,
21 WILLIAM STRAIGHT,
DAVID EULER, Recalled
22 JAMES ALEXANDER MacLEAN,
TOM TWORZYANSKI, Sworn

23 MS. MURPHY: Mr. Chairman, Mr.
24 Tworzyanski's curriculum vitae was with this panel
25 statement and Mr. MacLean's CV was distributed to all

1 of the parties just over -- I can just give you the
2 date, October 23rd, with a letter of October 23rd.

3 Mr. Tworzyanski is a professional
4 forester with particular expertise in the Ministry's
5 forest management agreement program, and we ask that he
6 be so qualified.

7 THE CHAIRMAN: Very well. Are there any
8 objections to that qualification?

9 (No response)

10 He will be qualified in that area.

11 MS. MURPHY: Dr. MacLean is a fisheries
12 ecologist. He did fisheries research for 10 years and
13 supervised researchers for five years and he was
14 recently appointed Director of the Wildlife Branch of
15 the Ministry of Natural Resources.

16 He has particular expertise in the
17 conduct of fisheries research projects and in the
18 relationship between scientific information and
19 management decisions.

20 And we ask that he be so qualified.

21 THE CHAIRMAN: Any objections?

22 (no response)

23 He will be qualified in those areas.

24 MS. MURPHY: And I think Ms. Blastorah
25 had one matter she wanted to raise before we filed some

1 exhibits.

2 MS. BLASTORAH: Mr. Chairman, you will
3 recall Mr. Gordon was previously before the Board in
4 Panel 4 and was sworn at that time and qualified, and I
5 would just like to address one matter in relation to
6 his current position.

7 Mr. Gordon, I understand that you have a
8 new position since you last appeared before the Board;
9 is that correct?

10 MR. GORDON: That's correct.

11 MS. BLASTORAH: Could you advise the
12 Board of your new title?

13 MR. GORDON: Environmental Monitoring
14 Coordinator for the Ministry of Natural Resources.

15 MS. BLASTORAH: And I understand that you
16 will be giving some evidence in this panel with regard
17 to the proposed funding or the estimates of cost for
18 the Ministry's proposed terms and conditions.

19 Has your new position involved you in any
20 way in the development of those estimates?

21 MR. GORDON: Yes, I was directly involved
22 in the preparation of those estimates.

23 MS. BLASTORAH: That's all, Mr. Chairman.
24 We don't wish to change his qualification, I just
25 wanted the Board to be aware of that.

1 THE CHAIRMAN: Thank you.

2 MS. MURPHY: Now, Mr. Chairman, if I am
3 right, I think we are at Exhibit 91 -- the next exhibit
4 would be 915?

5 THE CHAIRMAN: That's correct.

6 MS. MURPHY: Exhibit 915 then would be
7 the statement of evidence for Panel 16 and we have
8 provided a clean copy of that statement of evidence and
9 I think Mrs. Koven will find that towards her left
10 hand.

11 MRS. KOVEN: (nodding affirmatively)

12 THE CHAIRMAN: That will be Exhibit 915.

13 MS. MURPHY: Thank you.

14 ---EXHIBIT NO. 915: Panel 16 Statement of Evidence.

15 MS. MURPHY: I have also provided you
16 with a pile of documents, these are proposed exhibits.
17 What I intend to do is go through them, please let me
18 know if you are missing one. We provided you with
19 lists of the exhibits this morning and we provided them
20 to Mrs. Devaul.

21 So the next exhibit is a letter and the
22 title of it is: Errata List re Panel 16 Statement of
23 Evidence. That was a letter dated October 23rd from me
24 to all full-time parties. Attached to that letter are
25 some notes about errata to this panel statement.

1 THE CHAIRMAN: All right. That will be
2 Exhibit 916.

3 ---EXHIBIT NO. 916: Errata list re Panel 16 Statement
4 of Evidence.

5 MS. MURPHY: The next exhibit is the
6 curriculum vitae of Dr. MacLean and we provided that to
7 the Board separately, so that would be the following
8 exhibit, 917.

9 THE CHAIRMAN: 917.

10 ---EXHIBIT NO. 917: Curriculum vitae of Dr. James
11 Alexander MacLean.

12 MS. MURPHY: The next document we have
13 provided is a compilation of some legislation that has
14 relevance to this panel and we thought it would be
15 easiest for people to have it all in one place to refer
16 to.

17 We've just called it on the list:
18 Selected Legislation Pertinent to Panel 16. It
19 includes the Crown Timber Act, the Fisheries Act, the
20 Public Lands Act and the Lakes and Rivers Improvement
21 Act. It has all of the Crown Timber Act and selected
22 portions of the other three.

23 THE CHAIRMAN: All right.
24 Notwithstanding it's legislation, we will make it
25 Exhibit 918.

1 MS. MURPHY: Thank you.

2 ---EXHIBIT NO. 918: Selected Legislation pertinent to
3 Panel 16.

4 MS. MURPHY: The next document is a paper
5 entitled: Summary of Proposed Amendments to the Crown
6 Timber Act -- actually, let me just check the title on
7 that. Actually the title of the paper is: The Crown
8 Timber Act: A General Description of the Act and
9 Proposed Amendments, and that's dated November 1st,
10 1989, and was provided to the parties on November 1st.

11 THE CHAIRMAN: Exhibit 919.

12 ---EXHIBIT NO. 919: Paper entitled: The Crown Timber
13 Act: A General Description of the
14 Act and Proposed Amendments, dated
November 1st, 1989.

15 MS. MURPHY: The next document on the
16 list is a document that discusses the monitoring
17 program for the moose guidelines. The proper title of
18 that document is: Moose Guidelines Effectiveness
19 Monitoring and it is dated September, 1989.

20 And just for the information of the
21 parties, this document and the following two, I
22 believe -- the following three actually were
23 distributed by letter on October 5th and we don't
24 actually have extra copies for everybody. If someone
25 doesn't have theirs, just let us know and we will do

1 something about that. We would probably not be getting
2 to those documents until this afternoon.

3 THE CHAIRMAN: All right. Exhibit 920.

4 ---EXHIBIT NO. 920: Updated document entitled: Moose
5 Guidelines Effectiveness
Monitoring, dated September, 1989.

6 MS. MURPHY: The next on the list is
7 Update on Aquatic Effectiveness Monitoring Program
8 dated October 5th, 1988. I believe that's the correct
9 title of that document, Mr. Chairman.

10 THE CHAIRMAN: Exhibit 921.

11 ---EXHIBIT NO. 921: Updated document entitled:
12 Aquatic Effectiveness Monitoring
Program, dated October 5th, 1988.

13 MS. MURPHY: The next document - again
14 one that was provided to the parties on October 5th -
15 Update on Tourism Effectiveness Monitoring Program,
16 that is dated October 5th, 1989.

17 THE CHAIRMAN: Exhibit 922.

18 ---EXHIBIT NO. 922: Updated document entitled:
19 Tourism Effectiveness Monitoring
Program, dated October 5th, 1989.

20 MS. MURPHY: The next document is
21 entitled: Wildlife Habitat Inventory and Population
22 Monitoring Projects. That is also dated October 5th,
23 1989, and was an update that was provided to the
24 parties at that time.

25 THE CHAIRMAN: Exhibit 923.

1 ---EXHIBIT NO. 923: Updated document entitled:
2 Wildlife Habitat Inventory and
3 Population Monitoring Projects,
 dated October 5th, 1989.

4 MS. MURPHY: The next document is a
5 series of interrogatories from the Ontario Federation
6 of Anglers & Hunters.

7 Would it be advisable to just ask the
8 reporter to duplicate those numbers in the record
9 rather than reading them all out?

10 THE CHAIRMAN: Very well.

11 MS. MURPHY: What I would suggest that
12 you note is that there is a series of interrogatories
13 to Panel 16, and I have also added OFAH Interrogatory
14 No. 42 for Panel 17 which deals with a similar subject
15 matter.

16 THE CHAIRMAN: Very well. Exhibit 924.

17 ---EXHIBIT NO. 924: OFAH Interrogatory Nos. 8, 9, 11,
18 12, 15, 21-25, 34-36, 43, 44
 (Panel 16), and 42 (Panel 17).

19 MS. MURPHY: The next document is a
20 series of interrogatories from the Nishnawbe-Aski
21 Nation to Panel 16 and those are Interrogatory Nos. 3,
22 7 and 9.

23 THE CHAIRMAN: Exhibit 925.

24 ---EXHIBIT NO. 925: NAN Interrogatory Nos. 3, 7, 9
25 (Panel 16).

1 MS. MURPHY: The next document is a
2 series of interrogatories from the Ministry of the
3 Environment to Panel 16. This page contains
4 Interrogatory Nos. 1, 2, 5, 7, 8 and 17 from the
5 Ministry of the Environment.

6 THE CHAIRMAN: Exhibit 926.

7 ---EXHIBIT NO. 926: MOE Interrogatory Nos. 1, 2, 5, 7,
8 8, 17 (Panel 16).

9 MS. MURPHY: Mr. Chairman, the next page
10 comences with an interrogatory from the Ministry of the
11 Environment to Panel 16, their Interrogatory No. 6.

12 In response to that interrogatory, we
13 referred them to a number of other interrogatories and
14 questions that had been received and answered
15 previously and we thought it might be useful to have
16 the things that were referred to in the answer together
17 in one package.

18 So what we have provided here is the
19 Ministry of the Environment interrogatory for Panel 16
20 Question No. 6 and then information that is referred to
21 therein, and you will see that it includes a previous
22 interrogatory which is already an exhibit, we have
23 marked that on the opening page, and also a letter that
24 added more information to the previous interrogatory.

25 So for convenience we thought it was

1 easier to put them all in one package.

2 THE CHAIRMAN: All right. Exhibit 927.

3 ---EXHIBIT NO. 927: MOE Interrogatory No. 6 (Panel
4 16) with MNR's responding
5 documentation, OFAH Interrogatory
No. 1 (Panel 7), and letter dated
November 1, 1988.

6 MS. MURPHY: The next document is a
7 series of interrogatories from Forests for Tomorrow to
8 Panel 16. And, again, this is a situation where I
9 would suggest that the reporter reproduce those numbers
10 in the record.

11 THE CHAIRMAN: Very well. That will be
12 Exhibit 928.

13 MS. MURPHY: And the final document is
14 related really to Exhibit 928 and probably it should be
15 be 928A and B.

16 What I have done is, in the last document
17 I have taken a covering letter that went to Forests for
18 Tomorrow with these interrogatories. I have also put
19 in this package some correspondence that is referred to
20 in answers to the interrogatories.

21 It is just that they are referred to in a
22 number of places, so we thought it would be easier to
23 have that located separately. So I would suggest that
24 that be 928B and the previous one 928A.

25 THE CHAIRMAN: Very well.

1 the title of the column...

2 THE CHAIRMAN: One of the members has the
3 wrong witness statement here. Are you going to get
4 into this witness statement right away?

5 MS. MURPHY: Well, we probably will not
6 be dealing with it for a couple of hours, but I just
7 thought at this point just for, you know,
8 administrative purposes we could make that one
9 amendment.

10 THE CHAIRMAN: All right. Do you want to
11 just indicate what the amendment is to us?

12 MS. MURPHY: Certainly. As I was saying,
13 there is a column at the far right-hand side: Local
14 Monitoring--

15 THE CHAIRMAN: Yes.

16 MS. MURPHY: --Area Inspection Program,
17 and it lists underneath it a series of answers, yes and
18 no. If you will look at the fifth item down where it
19 says: 'yes', I am advised by Mr. Straight that it
20 should say: 'no'.

21 Is that correct, Mr. Straight?

22 MR. STRAIGHT: That's correct, Ms.
23 Murphy.

24 MS. BLASTORAH: (handed)

25 THE CHAIRMAN: This one is Panel 14's as

1 well. I think the problem is, is everyone can't read
2 Roman numerals.

3 MS. MURPHY: Roman numerals. I get lost
4 over 50, I am usually okay up to there.

5 MS. CRONK: Don't brag.

6 THE CHAIRMAN: Well, we will straighten
7 it out at the break if we are not going to get into
8 them right way.

9 MS. MURPHY: I think you probably won't
10 actually need the witness statement until probably
11 after lunch, but you can probably get it over the
12 break.

13 THE CHAIRMAN: Okay.

14 MS. MURPHY: Okay. And just before we
15 begin then, I have for you a document, order of
16 evidence for Panel 16. I would like to advise you in
17 what order this evidence will be led and what they will
18 be discussing. (handed)

19 THE CHAIRMAN: Thank you. Okay. This
20 will be Exhibit 929.

21 ---EXHIBIT NO. 929: Document re: order of evidence for
22 Panel 16.

23 MS. MURPHY: This panel, Mr. Chairman and
24 Board, will be discussing monitoring in the context of
25 natural resource management.

1 The panel will begin with Dr. Osborn and
2 he will be discussing a concept that is really a main
3 concept to keep in mind throughout the evidence of the
4 panel. Essentially the thing to keep in mind that we
5 are discussing an activity; that is, monitoring, that
6 must be designed with an awareness that you are
7 examining changing systems, and this was referred to in
8 earlier evidence by Mr. Armson, for example, discussing
9 the dynamics of the system.

10 This panel will be explaining that
11 monitoring systems have existed for a considerable time
12 in the Ministry of Natural Resources. They will
13 describe some enhancements that are currently in
14 development, and they will be discussing some entirely
15 new projects; therefore, much of the evidence that you
16 are going to hear focuses on concepts and it looks at
17 the reasons for enhancing existing systems and
18 developing new projects, and also describes the uses
19 that can be made of that new information.

20 From Document 1 you will see that Mr.
21 Cary and Mr. Tworzyanski will be discussing compliance
22 monitoring and there are a series of questions from the
23 parties asking about: In what way compliance
24 monitoring may differ between Crown units and forest
25 management agreement areas. They will be dealing with

1 that matter and they will also be discussing in fairly
2 short order the legislation that is relevant to
3 enforcement.

4 Following that, Mr. Cary will discuss
5 area inspections and Messrs. Cary, Tworzyanski and
6 MacLean will talk about operational audit which was one
7 of the matters that was raised by the Board. In
8 addition, Mr. Tworzyanski will discuss the FMA
9 five-year reviews which take place in addition to
10 operational audit.

11 In Document No. 2, that will be led off
12 by Dr. MacLean who will discuss effects and
13 effectiveness monitoring for non-timber values and
14 essentially will lead the discussion with respect to
15 the provincial effects and effectiveness monitoring
16 program.

17 And the document that I have given you
18 sets out the main things that that group will be
19 discussing: The reasons for focusing effort at the
20 provincial level, the factors that make the program
21 comprehensive, deliverable and adaptive. And I believe
22 you were interested in that concept of being
23 deliverable, Mr. Chairman.

24 They will discussing the organization of
25 the provincial program, in particular the committee

1 structure that you had some questions about. They will
2 be giving a short description of each of the specific
3 projects and those are listed, dealing with tourism,
4 heritage, fisheries, moose, deer and other wildlife,
5 and they will also be discussing expected results from
6 the program.

7 Following that, Mr. Straight will discuss
8 effect and effectiveness monitoring for non-timber
9 values at the local level.

10 For Document No. 3, Mr. Gordon will
11 discuss effects and effectiveness monitoring for timber
12 values at the management unit level, and Dr. Osborn
13 will be discussing the annual report on timber
14 management - that's a proposal - and he will discussing
15 the relationship of that to the silvicultural
16 information system which the Board was interested in
17 hearing more about. He will also be discussing the
18 state of the forest report which is also discussed in
19 the evidence.

20 And finally, as you heard early, Mr.
21 Gordon at the end of the piece is going to be
22 discussing the funding matters with relation to the
23 terms and conditions that deal with monitoring, but he
24 will also, for the information of the Board, be
25 providing generally the background information on

1 funding for terms and conditions generally, though of
2 course for this panel he is focusing primarily on the
3 monitoring aspect.

4 And finally, one more matter just before
5 we begin, if you have your terms and conditions,
6 Exhibit 700. In preparation for this panel we
7 determined that actually it was difficult to understand
8 Dr. Euler's evidence without an amendment to the terms
9 and conditions, and I am going to advise you right now
10 that there will be a change to condition No. 52 in our
11 draft terms and conditions. It is 52?

12 DR. EULER: (nodding affirmatively)

13 MS. MURPHY: And for the purposes of the
14 record, in draft condition 52, 52(a) deals with Timber
15 Management Guidelines for the Provision of Moose
16 Habitat and discusses the study that will take place.

17 The amendment would be to add an item
18 inbetween item (i) and item (ii) so it would be item
19 (ii), and the item would say:

20 "Assess the efficacy of the guidelines in
21 providing habitat for other species;"

22 So there would then be a semi-colon and
23 the final item would become item (iii).

24 So that the idea now is that -- the
25 concept we wanted to communicate is that the moose

1 habitat study will look at the efficacy of the
2 guidelines in providing moose habitat and will also
3 assess the efficacy of the guidelines in providing
4 habitat for other species and, finally, recommend
5 improvements to the guidelines.

6 And we expect, Mr. Chairman, by noon to
7 be able to advise you about what time we might complete
8 tomorrow. You might be interested in looking at early
9 reservations if possible.

10 THE CHAIRMAN: It's very likely we would.

11 MS. BLASTORAH: Mr. Chairman, I would
12 like to begin by marking a package of overheads that
13 are going to be referred to by Dr. Osborn in his
14 introductory remarks. It is eight separate pages.

15 THE CHAIRMAN: So Exhibit 930A through H?

16 MS. BLASTORAH: Well, I have taken the
17 liberty of numbering the pages one to eight, so perhaps
18 we could just mark it as a package.

19 THE CHAIRMAN: Okay. Very well.

20 MS. BLASTORAH: (handed)

21 THE CHAIRMAN: Thank you.

22 ---EXHIBIT NO. 930: Package of overheads to be
23 referred to by Dr. Osborn,
 Page Nos. 1-8.

24 MS. BLASTORAH: If I could ask Dr. Osborn
25 to come up to the overhead projector. We don't have a

1 microphone right there, although we have never had any
2 trouble hearing Dr. Osborn in the past. So perhaps we
3 will just see how it goes and arrange for a microphone
4 at the overhead on the break.

5 THE CHAIRMAN: Unless you have lost your
6 resonance since Panel 4, Dr. Osborn, we should be all
7 right.

8 DR. OSBORN: I think I'm okay, sir.

9 MS. BLASTORAH: And I believe Dr. Osborn
10 is going to go through this series of overheads and
11 outline the various aspects of the evidence of the
12 panel.

13 DIRECT EXAMINATION BY MS. BLASTORAH:

14 Q. So perhaps if you could just do that.

15 DR. OSBORN: A. Dr. Osborn might if the
16 bulb worked.

17 MR. CARY: It just blew, John.

18 MS. BLASTORAH: Mr. Chairman, I believe
19 we will have to have a few minutes here to--

20 MS. MURPHY: Change the light bulb.

21 MS. BLASTORAH: --change our light bulbs
22 and overcome these technical difficulties.

23 THE CHAIRMAN: Well, why don't we --

24 DR. OSBORN: Well, if everybody has got
25 the overheads that counts in the room, we can go

1 through them without worrying about changing the light
2 bulb, and I will speak to them.

3 THE CHAIRMAN: Okay.

4 MS. BLASTORAH: If that's all right with
5 the Board.

6 THE CHAIRMAN: That's fine. What about
7 members of the public at the back; do they have these
8 documents in front of them?

9 MS. BLASTORAH: No, Mr. Chairman. I am
10 not sure whether we have any additional copies or not.

11 THE CHAIRMAN: Well, why don't we take a
12 short break, let you fix the light bulb. I would like
13 the members of the public to be able to follow along
14 with the discussion as well, it will be more meaningful
15 for them.

16 MS. BLASTORAH: Certainly, Mr. Chairman.

17 THE CHAIRMAN: All right. We will take,
18 what, 10 minutes?

19 MS. BLASTORAH: I think that ought to do
20 it. I believe we have another bulb.

21 THE CHAIRMAN: Thank you.

22 ---Recess taken at 9:20 a.m.

23 ---On resuming at 9:35 a.m.

24 THE CHAIRMAN: Thank you. Be seated,
25 please.

1 MS. BLASTORAH: I think we have overcome
2 our technical difficulties, Mr. Chairman. We will try
3 again.

4 DR. OSBORN: Mr. Chairman, Members of the
5 Board, I intended to make a brief introduction to Panel
6 16, after my counsel's explanation I was going to be
7 even briefer, although I hadn't perhaps planned it to
8 be quite so electrifying as five or ten minutes ago.

9 Panel 16 will talk primarily about two
10 pieces, compliance; comparison of planning versus the
11 actual results, if we do what we said we would do in
12 the way that we said we would do it. And the second
13 part of it is essentially the analysis of the results;
14 effects and effectiveness monitoring.

15 This part merely and very generally
16 illustrates who will be the key speakers for the two
17 key parts. Just a general outline of when somebody
18 stands up you have some feeling as to in this diagram
19 where it is that they are speaking.

20 All of the discussion in Panel 16 is so
21 much talk without there being some plan with
22 objectives, strategies, some action; none of the
23 discussion in 16 can go on without something happening.
24 And you have heard at great length in Panel 15 the
25 process whereby that action is planned, thought about

1 and rethought about after the action has taken place.
2 So Panel 15 spoke about the items in that top box,
3 including the word 'preplan'.

4 MS. BLASTORAH: Q. Dr. Osborn, perhaps
5 you could just indicate as you change the overheads so
6 that the record will indicate, for instance, now that
7 we are going to page 4 of Exhibit 930.

8 DR. OSBORN: A. Yes.

9 Q. Thank you.

10 A. All of the boxes that have been
11 described so far really are tied together, and one of
12 the points to be made in 16 is that what we talk about
13 in 16 is an overall part of a management planning and
14 control loop. It is a closed system. What is said in
15 16 is a means to an end and the end is to come back to
16 the planning and replanning and rethinking aspect.

17 And so if you follow the flow within Item
18 No. 4, of the set of exhibits, the plan gives rise to
19 actions, the actions are looked at, the results of the
20 actions are looked at vis-a-vis compliance and effects
21 and effectiveness, out of those boxes emerge
22 recommendations which give rise to a piece of jargon,
23 the word 'control'. This is the management control
24 loop.

25 And if you talk to resource managers

1 about: How is your monitoring program going, they
2 might look at you and wonder whether you were back in
3 high school; however, if you talk about management
4 control they will have some understanding in terms of
5 jargon, the jargon of environmental assessment
6 vis-a-vis the jargon of resource management.

7 So we will think of this in a resource
8 management sense as a management control loop of which
9 monitoring is an integral part of that loop.

10 If we go to page No. 5 in the set, we
11 introduce - and this will be spoken to in this panel -
12 we introduce a realization that in the analysis of
13 effects and effectiveness, in that analysis there are
14 some aspects about which we are uncertain, and I will
15 give you an example in the timber sense to illustrate
16 this.

17 If the objective in the plan was to grow
18 wood for the mill in the future, that's the objective,
19 one of the strategies is to plant trees, and the
20 thinking as to how that is done with regards to
21 obligation goes through looking at the standards, the
22 rules, the guides to ascertain: Which trees, where,
23 how, when.

24 The results of the planting of the trees
25 are looked at in terms of compliance with: Did you do

1 what you said you were going to do? Did you in fact
2 plant trees? Did you plant the trees in the way they
3 were supposed to have been planted?

4 From the time we get to analysing the
5 results, the effects and the effectiveness, we will be
6 paying attention to: How many of them were there out
7 there that were alive; effect, and in projecting that
8 number into the future when the mill wanted that wood:
9 Were there enough of them, too few, too many;
10 effectiveness.

11 And you have heard in previous panels
12 that, for example, the stocking standard thinks that 80
13 per cent stocking is better than 40 per cent stocking,
14 but 40 per cent stocking is a sort of living on
15 threshold.

16 Today's level of expertise thinks that 80
17 is good. In terms of effectiveness, that would look
18 better than something that only gave you 40 per cent.
19 From the degree of uncertainty: Are we sure projecting
20 that at age 5 to age 60, that is exactly what we want?
21 There is a degree of uncertainty even with that
22 existing stocking standard. A very simple example.

23 On Page 6 of the exhibit we will speak
24 about what happens to that uncertainty. In fact, we
25 will take that to another set of functions, another set

1 of peoples to look at resolving that uncertainty. And
2 in our example we would take that level of stocking and
3 ascertain perhaps two things very simply.

4 The first thing would be: What does 40,
5 50, 60, 70 per cent stocking mean long term, and then
6 to illustrate maybe 80 per cent is absolutely perfect
7 for supplying wood to a pulp mill 40 years down the
8 road, 60 years down the road; whereas 40 per cent
9 stocking, because the trees are wider apart, may be
10 more advantageous if you are growing wood for a
11 sawmill. A very simplistic example.

12 The second piece we may well very much
13 turn to with the uncertainty is the projection
14 methodology. We have been at length in different
15 panels speaking about "growth and yield". Just to
16 illustrate the fact that that uncertainty does not end
17 up in limbo.

18 The panel will speak to the results
19 feeding back into helping better analyse the effects
20 and the effectiveness, and the panel will briefly speak
21 to the results from that going into a refinement maybe
22 of the standard. In my simple example, a refinement
23 maybe of a stocking standard, a more detailed
24 realization that 40 was poor, 80 was good is now
25 somewhat better understood, perhaps refined.

1 Page 8 in the set, which is the last
2 diagram in this set, really speaks to the fact that
3 Panel 16 has already been covered, in that what was
4 said in 15 covered the entire part of this process;
5 they spoke to planning strategies, results and feeding
6 that back to the replan.

7 However, the importance of this
8 monitoring process within this assessment causes us to
9 speak in more detail as to what is in compliance
10 effects and effectiveness. So although the overall
11 diagram speaks to resource management, we have carved
12 up a piece of that diagram, the part that's below the
13 dotted line on the diagram, to specifically speak to in
14 Panel 16. The point being made is that the overall
15 aspects of 16 are a piece of management planning and
16 control.

17 Q. And I understand, Dr. Osborn, that
18 you also wanted to go on now and relate this management
19 control loop, as you have described it, to different
20 levels of geography and how that works with different
21 levels of geography?

22 A. That's correct. We made a very quick
23 decision this morning, Mr. Chairman. We had a diagram
24 that I plagiarized, indeed was much too complicated -
25 perhaps the disvalue in using an American diagram - so

1 I will simply draw it and I am very quickly going to ad
2 lib it.

3 Q. Dr. Osborn, could you move that back
4 and shift it a bit just so that the parties can see it
5 as well. Thank you.

6 A. The loop I just described had no
7 context of geography, no indication of: What piece of
8 land are we looking at. So the loop, however, needs to
9 be thought about - planning, monitoring, replanning -
10 from what piece of real estate.

11 And you have heard in many other panels
12 that for the most part, especially the timber side, the
13 management unit is one of the key pieces of geography;
14 however, there are other levels of geography about
15 which we will look at monitoring and show a smaller
16 piece or a smaller loop - and I have deliberately put
17 it inside, nested it - and we will look at other pieces
18 of geography - and I am deliberately going to call this
19 level 2 - and level 2 may be a district, a region, it
20 may be a wildlife habitat, the extent of moose
21 population, and I have deliberately called it level 2
22 because it changes depending upon the subject under
23 investigation.

24 Very simplistically, there is a third
25 level and the third level essentially is the province

1 and the need to have an understanding of: How are we
2 doing, how well are we doing from a provincial
3 perspective? And within Panel 16 there will be
4 identification of different levels of geography, and
5 different witnesses will speak about certain aspects
6 with regards to geography.

7 One other point to make from this
8 diagram. If we were to go through the upper part of
9 the diagram and bisect it and imagine that in the top
10 diagram we were looking down on top of something; and
11 now let's take it and rotate it, imagine you are
12 looking down on top of a pyramid - and that's the plan
13 of it - we now look from the side, we still have our
14 three separate pieces of geography.

15 But the point being made with the lower
16 of the two diagrams is that the level of detail, at the
17 management unit level that level of detail is typically
18 greater than the level of detail at level 2 and, in
19 turn, the level of detail at the province, level of
20 detail, is typically less.

21 There are two points with the diagram:
22 There are levels of geography to consider in that
23 management control loop and the levels of detail
24 available at each management control loop will vary.

25 THE CHAIRMAN: Would mark that Exhibit

1 931, please.

2 MS. BLASTORAH: What would you like to
3 call that, Dr. Osborn? Something descriptive, please.

4 THE CHAIRMAN: Canadian diagram?

5 DR. OSBORN: Geographic levels of Panel
6 16. How boring.

7 ---EXHIBIT NO. 931: Hand-drawn diagram depicting
8 geographic levels of Panel 16.

9 MS. BLASTORAH: That's the opening, Mr.
10 Chairman.

11 MS. MURPHY: We have a series of
12 overheads. These overheads deal with all of Document 1
13 and, again, they have page numbers and they are
14 numbered pages 1 to 32.

15 THE CHAIRMAN: Very well. Exhibit 932.

16 MS. MURPHY: (handed)

17 THE CHAIRMAN: Thank you.

18 MS. MURPHY: Excuse me, I have given you
19 the wrong package. If you will make that -- actually,
20 we might as well mark this. This is actually the
21 package of overheads for Document 2 rather than
22 Document 1.

23 THE CHAIRMAN: So do you want that as
24 Exhibit 932?

25 MS. MURPHY: You might as well. It is

1 going to be marked in any event.

2 THE CHAIRMAN: Okay.

3 MS. MURPHY: These are the overheads for
4 Document 1, those are pages 1 to 12. (handed)

5 THE CHAIRMAN: Well, can we just reverse
6 the numbers, I think it would be more logical.

7 MS. MURPHY: That's fine.

8 THE CHAIRMAN: So 931 will be the
9 overheads for Document 1.

10 MR. MARTEL: No, no, 932.

11 MS. CRONK: I am sorry, just a minute --

12 THE CHAIRMAN: Sorry, 932 will be the
13 overheads for Document 1; 933 will be the overheads for
14 Document 2.

15 MS. MURPHY: Fine.

16 ---EXHIBIT NO. 932: Hard copy of overheads for
Document 1 (pages 1-12).

17 ---EXHIBIT NO. 933: Hard copy of overheads for
18 Document 2 (pages 1-32).

19 DIRECT EXAMINATION BY MS. MURPHY:

20 Q. Now, Mr. Cary, I understand you are
21 leading off the discussion on compliance monitoring?

22 MR. CARY: A. That's correct, Ms.
23 Murphy.

24 As Ms. Murphy earlier indicated, there
25 had been some interrogatories about compliance

1 monitoring and I would like to tell you about
2 compliance monitoring and especially how it is applied
3 and how it works on the three types of management
4 units. And I believe Dr. Osborn in Panel 3 some time
5 back gave a definitive description of those management
6 units.

7 Now, compliance monitoring is the process
8 or set of activities that is designed to ensure
9 conformance with plans and/or standards, compliance
10 specifically with timber management plans, the details
11 of which are set out in annual work schedules or in
12 cutting approvals, compliance with the Crown Timber Act
13 and compliance with the operational standards that are
14 set out, for example, in a multi-purpose work permit,
15 or compliance with the specifications set out in a
16 contract.

17 The Ministry of Natural Resources is
18 responsible for ensuring that compliance monitoring
19 takes place on Crown land. Companies are responsible
20 for complying with their obligations; for example,
21 cutting where they are supposed to cut. The Ministry,
22 therefore, conducts compliance monitoring on Crown
23 management units, on company management units, and on
24 forest management agreement areas.

25 The Ministry of Environment asked for a

1 description of the monitoring elements which are
2 mandatory and we provided a lengthy response to them in
3 Ministry of Environment Interrogatory No. 1.

4 MS. MURPHY: And for the record, Mr.
5 Chairman, that's in Exhibit 926.

6 MR. CARY: That set of activities that
7 makes up compliance monitoring comprises four elements
8 to start with; namely, field inspections, audit,
9 contract administration and annual timber management
10 plan reports, and we have called these four components
11 direct components, and we have used that terminology
12 because they are formal requirements and are also
13 reported.

14 Others that I will describe are less
15 formal and we classify those as indirect. These
16 indirect components are based on concepts involving
17 responsibility, accountability and understanding, and
18 without these elements the implementation of the formal
19 direct components would be less effective.

20 Legislation and enforcement is the final
21 element in the compliance monitoring process should
22 non-compliance occur.

23 Now, with the help of the first overhead
24 of Exhibit No. 932, which is Compliance Monitoring
25 Direct, I would like to explain these elements and how

1 they apply to the three management units.

2 Mr. Tworzyanski will be telling you about
3 the FMA specific exceptions after I complete a quick
4 runthrough.

5 If you would have a look at that first
6 topic, inspection of field operations. Now, we have
7 been conducting field inspections for many, many years
8 and for many, many reasons. We conduct cut
9 inspections, we inspect areas prior to cutting and
10 after harvest, we carry our checks out site
11 preparation, on planting, on seeding operations, and
12 then we carry out checks on survival, stocking and free
13 to grow. We carry out these surveys and inspections
14 from the air, from the ground, and we use aerial
15 photography and we will continue to do this.

16 Ms. Murphy mentioned we are bringing a
17 new requirement to this inspection process and this new
18 requirement will be to ensure that all activities are
19 examined and reported in a consistent manner using one
20 format. That new requirement we have called area
21 inspections, and I will a little later this morning
22 discuss that in detail. Area inspections will formally
23 document compliance with timber management plans,
24 annual work schedules, cutting approvals and
25 legislation.

1 I have said before that inspection of
2 field activities will be conducted by MNR on all units.
3 We will also of course conduct -- so area inspections
4 will be conducted on all those units, and we will also
5 conduct the types of surveys that I mentioned
6 previously across all units.

7 Now, all these inspection reports, be
8 they area inspection reports or be they other reports
9 from other surveys, are kept on file at the district
10 and are available for public inspection.

11 I would just like to tell you that MNR
12 isn't alone out there. Large companies carry out site
13 inspections routinely to monitor their operations and
14 their conformance with plans; some companies undertake
15 supplementary aerial photography of cut-over and
16 renewal operations in order to monitor their progress.

17 THE CHAIRMAN: Mr. Cary, are these
18 reports prepared by companies available to the public
19 as well, or is that up to the individual company?

20 MR. CARY: That's up to the individual
21 company.

22 THE CHAIRMAN: Is there any thought of
23 ensuring that these are made available to the public,
24 save and except perhaps information which might be of
25 use to competitors and that kind of thing?

1 MR. CARY: No, Mr. Chairman, we have
2 given no thought to that matter. We do not know
3 precisely what sort of information is reported by the
4 companies for the uses of their own staff. So I don't
5 exactly know the nature of those reports.

6 THE CHAIRMAN: Have there ever been any
7 comparisons made between what the company reports and
8 what MNR reports on the same company unit, just to get
9 an idea of how accurate or inaccurate the two groups
10 might be in doing their survey work?

11 MR. CARY: Yes and no. Yes, because when
12 we go out there and conduct cut inspections, for
13 example, with the companies out with their staff in the
14 bush, the results would be uniform because both MNR and
15 the companies are viewing the same thing. We make the
16 formal report; we don't ask them to make a formal
17 report. They may make a report for the uses of their
18 own staff. If they go out, as they do every day, I am
19 not quite sure on what the nature of their reports
20 contain.

21 MS. MURPHY: Q. Two questions following
22 up from the Chairman's questions, Mr. Cary. First of
23 all, are you aware of any records that are provided by
24 the companies perhaps to the Ministry of Natural
25 Resources to assist them in determining the annual

1 cut-over, for example?

2 MR. CARY: A. There is a requirement in
3 the Crown Timber Act that the companies submit
4 aerial -- submit maps usually accompanied by aerial
5 photographs to the Ministry, I believe the date is
6 October of every year after the cut. So, yes, Ms.
7 Murphy, there is a requirement to submit aerial
8 photography with accompanying maps.

9 Q. And are you familiar with whether
10 that information is held in the district?

11 A. Yes, it is.

12 Q. And would that information, those
13 aerial photographs and maps, be available to the
14 public?

15 A. They would be.

16 Q. And another question following up on
17 the Chairman's questions - and we will be getting to
18 this a little later - but perhaps, Mr. Tworzyanski, you
19 can advise: Is there any function in, for example, FMA
20 reviews where company records are looked at and
21 compared to on-the-ground situations?

22 MR. TWORZYANSKI: A. Yes, that in fact
23 does take place during an FMA review where the review
24 teams views the company records, both those that are
25 required by the timber management planning reporting

1 process, which you heard about in some detail from
2 Panel 15, and also at the type of silvicultural records
3 that the companies keep for their own intent.

4 Q. And we will be hearing more about
5 that review of that kind of documentation a little
6 later; is that right, Mr. Tworzyanski?

7 A. That's correct.

8 Q. That's fine. Thank you.

9 MR. CARY: A. I would now like to move
10 on to the second direct component of compliance
11 monitoring and that's contract administration.
12 Contract administration checks for compliance with
13 performance standards and specifications.

14 It takes place in the field, on the site
15 during, for example, tree planting or road construction
16 operations; it is not done in the office. Often it
17 involves the collection and measurement of detailed
18 data, and the point here is that payment is made for
19 work that is performed to standard. Again, nothing new
20 for us, we have been doing this for a long time.

21 On Crown and company management units,
22 certain work is carried out for the Crown by
23 contractors. In these cases, we enter directly into
24 accounts with these people and we check to ensure that
25 specifications are met. This occurs, as I have said,

1 on a site and it could be on a daily basis.

2 Now, Mr. Tworzyanski will be telling you
3 a little about the process of invoice verification
4 later and that invoice verification process only occurs
5 on FMA lands, but invoice verification is a form of
6 contract administration.

7 Forests for Tomorrow in their
8 Interrogatory No. 21 asked about compliance with
9 contracts. We explained that we do indeed administer
10 contracts and we provided an example of the
11 administration of the 1988 Provincial Tree Planting
12 Program.

13 MS. MURPHY: And that interrogatory for
14 the purposes of the record, Mr. Chairman, is found in
15 Exhibit 928A.

16 MR. CARY: The third component of
17 compliance monitoring, the third direct component are
18 the timber management planning reports. The evidence
19 about these tables, and there were a long list of them,
20 was given in Panel 15, and all three types of
21 management units are required under the Timber
22 Management Planning Manual to submit these reports.

23 I will talk briefly to the two exceptions
24 on FMA lands. Table 6.7.2, which is the report of the
25 fifth year stocking assessment, is required from FMA

1 holders only, and then the FMA holders when they fill
2 out 6.4.1 and 6.4.2 have to complete the not
3 satisfactorily regenerated portion of those tables.

4 MS. MURPHY: Q. So would these be
5 characterized rather as additions than exceptions?

6 MR. CARY: A. Yes, I used the wrong
7 word. The last component of direct monitoring is audit
8 and specifically operational audit.

9 Operational audits examine compliance
10 with policies, procedures and technical standards and
11 they are one level of the Ministry looking at another.
12 They happen regularly and are formal in the sense the
13 findings are reported and then documented -- and then
14 implemented, sorry. And later on I will be giving you
15 a detailed account of how operational audits are
16 conducted.

17 Operational audits take place on all
18 types, on all those three units. On FMAs, however,
19 silvicultural operations are not carried out by the
20 Crown, so the auditors, the Ministry auditors, look at
21 how the Ministry's responsibilities are being conducted
22 on those FMA lands. And there is an additional
23 requirement for FMA review of the FMA holder's
24 operations and Mr. Tworzyanski will explain that.

25 Q. Mr. Tworzyanski, I understood you

1 were going to be giving us a little bit more detail on
2 the differences that are shown on this table with
3 respect to contract administration, timber management
4 plan reporting and audit in the FMA area; is that
5 correct?

6 MR. TWORZYANSKI: A. Yes. If I could
7 refer the Board to Exhibit 932, page 10. And before I
8 get into the real differences in compliance monitoring
9 between FMAs, company and Crown units as outlined on
10 Mr. Cary's slide, I would like to point out that FMAs
11 essentially replaced existing long-term licences
12 generally of an Order-in-Council nature.

13 In order to receive an FMA, the FMA
14 holders had to surrender their existing licence and
15 that was replaced with the FMA agreement which also
16 functions as the licence document. The FMA agreement
17 makes the holder responsible for planning, renewal,
18 maintenance and access activities.

19 Prior to FMAs, the Crown had a hands-on
20 relationship with the activities of renewal and
21 maintenance; that is, the Crown actually did that work
22 and the FMA holders did the -- or the prior licensees
23 did the other aspects of planning, harvest and access.

24 With the FMAs, the Ministry had to modify
25 its administrative processes from one that dealt with

1 hands-on delivery of the renewal and maintenance
2 activities in the field to one that dealt with results.
3 And, in order to achieve that, the FMA holder in the
4 agreement was made responsible for retreatment of
5 failures at their own cost. This resulted in some
6 minor operational differences in terms of monitoring
7 compliance.

8 I would like to refer you now to page 2
9 of the same package entitled: Contract Administration.
10 One of the differences between the three types of
11 management units is how contracts are administered. As
12 Mr. Cary indicated, we have essentially a day-to-day
13 contact with work done by the Ministry and we have a
14 slight -- by necessity we have a somewhat different
15 relationship with the FMA holder. And we have provided
16 some extensive detail on that in a response to Forests
17 for Tomorrow Interrogatories No. 4 and 28, Exhibit No.
18 928A, I believe.

19 Q. That's correct. And I believe in
20 that package there is attached a Ministry policy; is
21 that correct?

22 A. That's correct. There is a Ministry
23 policy attached that outlines in some detail how
24 invoices submitted by FMA holders are reviewed, audited
25 and approved.

1 I should mention also that Mr. Armson in
2 an earlier panel mentioned in some detail that FMA
3 holders only receive payment for work which is actually
4 done.

5 As I indicated, the invoice approval
6 process that we use on the FMAs is somewhat different
7 than that for activities that the Crown actually
8 undertakes and it is based on results and
9 responsibility; therefore, the invoice approval deals
10 with three aspects: location of the work, the quantity
11 of the work done, and compliance of the work with the
12 standards outlined in the silvicultural ground rules.
13 Those ground rules are found in the timber management
14 plan and repeated in the forest management agreement
15 itself.

16 We do not formally check the quality of
17 work done by FMA holders. There is, or there are
18 informal discussions that do take place between the
19 Ministry staff that field check company projects when
20 they are looking at them either with the company people
21 or talking to them later about it.

22 MR. MARTEL: Could I ask a question?

23 MR. TWORZYANSKI: Yes.

24 MR. MARTEL: Did you say that you don't
25 check the quality of work done by the FMA holders?

1 MR. TWORZYANSKI: That's correct. That's
2 the major difference. When we audit or look at our own
3 programs that we are doing, we do a certain amount of
4 quality checking. We have control over that program on
5 a day-to-day basis and we also have control over the
6 contractors, if we are using contractors, or over our
7 own staff on a daily basis.

8 With an FMA, we have an agreement that
9 has assigned responsibility for any retreatment of
10 failures to the FMA holder, so we don't have that
11 day-to-day contact, but we have that assurance that the
12 FMA holder is responsible for the successful completion
13 of a project.

14 MRS. KOVEN: According to that process
15 you are asking them to comply to that standard?

16 MR. TWORZYANSKI: That's correct.

17 MRS. KOVEN: Which gives you some kind of
18 control.

19 MR. TWORZYANSKI: I am sorry, I didn't
20 hear.

21 MRS. KOVEN: Which gives you some control
22 over the quality of the project?

23 MR. TWORZYANSKI: It does indirectly in
24 terms of the standards in the ground rules, that the --

25 MR. MARTEL: So if they don't live up to

1 the standards which you have agreed to or designated,
2 when it comes time to cost, it is then directly
3 attributable to them if in fact they have to go back
4 and redo some work. Is that why that agreement is put
5 in in that fashion?

6 MR. TWORZYANSKI: That's right.

7 MR. MARTEL: That's a way of controlling
8 the FMA holders then?

9 MR. TWORZYANSKI: Yes, it is.

10 THE CHAIRMAN: And what is the rationale
11 behind that, that you can't control the employees
12 working for a private company in terms of dismissing
13 them, penalizing them, et cetera, for shoddy work, so
14 instead you throw it back on the company in terms of
15 responsibility and they can take whatever action they
16 wish to and legally can against their own employees; is
17 that the idea?

18 MR. TWORZYANSKI: That's correct, Mr.
19 Chairman.

20 THE CHAIRMAN: Okay.

21 MS. MURPHY: Or their contractors.

22 THE CHAIRMAN: Or contractors.

23 MS. MURPHY: Q. Just to clarify though.
24 In Mr. Martel's question, he did ask you: Are they not
25 required to comply with the standards, and it was your

1 evidence, I believe, that they are.

2 MR. TWORZYANSKI: A. Yes, it was. I
3 should add, if the standard is not met, if the right
4 number of trees are not planted, if the right type of
5 trees are not planted, then payment would not be made
6 because the invoice does not comply with the
7 silvicultural ground rules.

8 MR. MARTEL: I guess I question that.
9 What bothers me is that while you might establish those
10 and you might supply the number of trees that have been
11 requested, you have no way of knowing by formal
12 checking the fact that they have planted accurately;
13 have you, or do you do that as well?

14 MR. TWORZYANSKI: You would know
15 whether -- one of the compliance tests in terms of tree
16 planting would be to look at the shipping records in
17 terms of how many trees went out, and then a field
18 check would give you an idea of how many trees have
19 been planted per unit area. And if that check caused
20 you to have some doubt about the number of trees
21 actually put in the ground, you would go further to
22 assure yourself that it did or did not happen.

23 MR. MARTEL: But then you are telling us
24 that MNR then doesn't actually go out and monitor
25 everything itself on the ground in all of the types of

1 units?

2 MR. TWORZYANSKI: MNR does not monitor
3 the quality of the work, it monitors whether that work
4 is carried out physically where it is supposed to be
5 with the right type -- with equipment specified in the
6 ground rules.

7 MS. MURPHY: Q. If I can ask a question
8 arising out of that question. You are talking about
9 invoice verification?

10 MR. TWORZYANSKI: A. That's correct.

11 Q. You are looking at certain records,
12 is that part of invoice verification?

13 A. Yes. The invoice is accompanied
14 generally by a map and/or a letter describing the
15 location and quantity of the work done.

16 Q. And if I might just follow up
17 because -- just those two steps. The second step you
18 discussed was doing a field check. Is that also part
19 of invoice verification?

20 A. Yes, it is.

21 Q. So invoice verification would
22 normally actually involve some kind of field sampling;
23 is that correct?

24 A. Invoice verification would involve
25 field sampling, either be it by physically visiting the

1 site or by reviewing aerial photography in the case of
2 certain site preparation projects.

3 THE CHAIRMAN: And is it tied back in
4 with the table that Mr. Cary referred to in terms of
5 areas not satisfactorily regenerated?

6 So, in other words, a certain number of
7 trees go out, the company says we have planted them
8 properly, met the standards, pay us and then some time
9 later, probably in the the next reporting year or
10 whenever, they would also have to report on areas not
11 satisfactorily regenerated?

12 MR. TWORZYANSKI: Mr. Chairman, not
13 satisfactorily regenerated areas are specifically
14 identified on maps prior to the FMA agreement taking
15 form. So if treatments are done on not satisfactorily
16 regenerated lands, they would be reported as such
17 specifically.

18 THE CHAIRMAN: Well, that doesn't cover
19 areas which were meant to be regenerated, were
20 replanted and never reached free to grow status or were
21 judged at some point down the road to be
22 unsatisfactorily regenerated?

23 MR. TWORZYANSKI: Okay. Those areas
24 would be assessed. It is a requirement to the FMA
25 holder to assess the stocking on those areas, usually

1 in the fifth year following the treatment. If those
2 areas were not regenerated according to the
3 specifications in the silvicultural ground rules, they
4 would have to be retreated at company cost and reported
5 as areas retreated.

6 MS. MURPHY: Q. And is that a report
7 that would be part of the reporting mechanism in the
8 timber management plan?

9 MR. TWORZYANSKI: A. Yes, that is one of
10 the reports, the sixth series reports that is found in
11 the timber management plan.

12 Q. And I understand you are going to be
13 giving us a little bit more detail about those reports.

14 As Mr. Cary indicated a few minutes ago,
15 there are some additional requirements in those reports
16 for FMA holders and I understood that in a minute you
17 are going to be giving us a little more detail about
18 those. Are those related to the questions that the
19 Chairman was putting?

20 A. That would cover it, yes.

21 MR. MARTEL: Just so I am clear, because
22 I think everything else hinges on this, I might be
23 wrong, and all the other types of things you are
24 monitoring for, I am hearing you say that we do not
25 have people on the ground inspecting everything that

1 occurs in all three types of units.

2 And I ask that very specifically because
3 I think it then hinges on what type of monitoring you
4 have or how effective monitoring can be for moose
5 habitat on the three types of units or any other thing
6 you want to be involved with.

7 So that I want to be abundantly clear
8 that either we do have people inspecting every aspect
9 of work that goes on visually on the ground, or we
10 don't. I just want to know that.

11 MS. MURPHY: Well, perhaps Mr. Gordon
12 could help us with that one, given that he has got the
13 most recent experience in the field?

14 MR. GORDON: Categorically the answer is,
15 Mr. Martel, that we do.

16 MR. MARTEL: Everything is?

17 MR. GORDON: We are looking -- I can't
18 say that we are getting to every single hectare, but we
19 are out there monitoring on all types of activities on
20 all management units. Whether there is a reserve on a
21 lake, on a company unit, a Crown unit or an FMA, we
22 will be checking that and have checked that in the
23 past.

24 If there are tree planting operations
25 going on on a company unit or a Crown unit, that's

1 directly the Crown's responsibility; we check those.
2 And when there are tree planting operations being
3 carried out on FMA units, we check those, but you have
4 to recognize, because the FMA holder has a slightly
5 different responsibility on that unit versus other
6 company units, we don't check those to the detail.
7 That is, for example on a Crown unit, if I was going
8 out to check a tree planting operation, I would be
9 carrying out specific measurements between trees, et
10 cetera; whereas on an FMA unit I would be going out to
11 check to see if they are planting the trees generally
12 in the right location, but the specific detailed
13 measurements between the trees, the Crown would not be
14 doing those, that's the responsibility of the FMA
15 holder. But we are out there looking at everything.

16 MR. MARTEL: All right, fine. Thank you.

17 MR. TWORZYANSKI: Mr. Martel, you might
18 wish to refer at a later point to pages 297 and 408 of
19 the panel evidence which is Exhibit 915, and those two
20 pages are examples of field inspections carried out on
21 FMA projects.

22 I should also add that all invoices
23 submitted by forest management agreement holders, in
24 the case of silvicultural invoices especially, are
25 certified by a registered professional forester on

1 behalf of the company and those same invoices must also
2 be signed off by a professional forester on behalf of
3 the Ministry of Natural Resources.

4 MS. MURPHY: Q. And just one final
5 clarification before we go on to those reports that we
6 were discussing.

7 Mr. Martel's question did turn on whether
8 all of these inspections that you were talking about,
9 Mr. Gordon, took place on the ground. And is it your
10 evidence that all of these inspections take place with
11 people walking on the ground?

12 MR. GORDON: A. A high proportion of
13 them would be with people walking on the ground.
14 However, we have to recognize sometimes you may fly
15 over in a helicopter or an Otter or sometimes you may
16 take a photograph, but the same type of monitoring
17 activities do take place on all three units.

18 Q. Thank you. Now, with respect to
19 those reports then that we were discussing earlier, and
20 we understood that there were some additional reports
21 required for the FMA holders.

22 And, Mr. Tworzyanski, you were going to
23 speak to those, and I believe those do relate generally
24 to the questions that the Chairman and Mr. Martel were
25 putting about how these areas might be assessed in the

1 future; is that right?

2 MR. TWORZYANSKI: A. I don't follow,
3 'how they would be assessed in the future'.

4 Q. How they are reported, excuse me.

5 A. Yes, it would, yes. I'm sorry. If
6 we could go back to Mr. Cary's slide, and I will just
7 briefly touch on some of the reporting differences, and
8 specifically Table 6.7.2 in the Timber Management
9 Planning Manual and, incidentally, these tables that I
10 will be referring to are found through pages 145 to 164
11 in the Timber Management Planning Manual. I apologize,
12 I don't have an exhibit number for that.

13 Q. I believe that's Exhibit 4.

14 MS. BLASTORAH: Seven.

15 MR. MARTEL: Seven.

16 MS. MURPHY: Seven. In any event, I
17 don't think you really need to look at it, it is just
18 for your records.

19 MR. TWORZYANSKI: I call these the sixth
20 series reporting tables. They are the annual reports
21 of activities carried on by the FMA holders and
22 generally they deal with harvest, renewal, maintenance,
23 a variety of support activities, access and assessment
24 results.

25 And in terms of differences between the

1 three types of units, they are really quite subtle.
2 FMA holders are obligated to report annually the
3 results of any stocking assessments that they have
4 carried out, that's in Table 6.7.2. And the reason for
5 that is, is that it's a requirement of the FMA
6 agreement, as well as being a standard in the
7 silvicultural ground rules.

8 Also, the tables called 6.4.1 and 6.4.2,
9 which are essentially tables dealing with renewal and
10 maintenance activities, require that some additional
11 information be reported by the FMA holder and that is
12 their activities on not satisfactorily regenerated
13 lands in terms of both regeneration and tending.

14 MS. MURPHY: Now, Mr. Chairman, you may
15 recall there was quite a good deal of evidence given in
16 Panel 4, I believe it was, that described the meaning
17 of the technical term NSR and that evidence in fact was
18 given by Mr. Gordon in Panel 4, and he explained at
19 that time that it was a decision made essentially at
20 the signing of an FMA that certain areas would require
21 treatment in the future. So those areas are called
22 NSR, that was the evidence. And this report indicates
23 which of those areas have been treated since the
24 signing of the FMA by the FMA holder.

25 Q. Is that correct, Mr. Gordon?

1 MR. GORDON: A. That's correct.

2 MR. TWORZYANSKI: A. One additional
3 comment in terms of reporting, Mr. Chairman, is that
4 the Ministry terms and conditions Nos. 53 and 54
5 dealing with annual reporting apply to all forest
6 management units.

7 Just very briefly on audits and the
8 differences between the forest management agreement
9 program and the other type of management units. Mr.
10 Cary indicated that the Ministry's operational audit
11 process applies across the board. The Ministry's
12 operational audit process deals with the Ministry's
13 delivery of programs and activities and, in addition,
14 the FMA program has what is called a five-year review.
15 Those have been referred to in earlier evidence and I
16 will be going through in some detail later when we
17 speak to audits about the actual content and methods
18 around a five-year review.

19 Q. Thank you. Mr. Cary?

20 MR. CARY: A. I would like to direct
21 your attention to Exhibit 929, page 3, and that
22 overhead indicates the indirect elements of compliance
23 monitoring that I alluded to earlier. These elements
24 are --

25 THE CHAIRMAN: That's Exhibit 932.

1 MS. MURPHY: (nodding affirmatively)

2 MS. CRONK: Yes, sir.

3 THE CHAIRMAN: Thank you.

4 MR. CARY: Yes, it is. I am sorry, I
5 have got the wrong exhibit number.

6 These elements are not part of the
7 compliance monitoring program; however, we believe that
8 they are very important because you have to know what
9 you are expected to do, and you have to know how to do
10 that task and, thirdly, you need a mechanism to report
11 what you did. So taken together these things promote
12 accountability and compliance and they underpin the
13 direct components of the compliance monitoring process.

14 The first element that I would like to
15 draw your attention to is the one labeled targets and
16 program direction, and here the issue is: Do you know
17 what you are expected to do? Now, some of these
18 targets and some of these directions may be provincial
19 and top down and they may look to the question: Are
20 you following Ministry policy, are you spending money
21 properly? And examples of this may be: Are you
22 following the Timber Management Planning Manual? Are
23 you following the Forest Production Policy
24 implementation schedule?

25 We match targets and dollars, so: Are

1 you spending money properly? We can monitor that by
2 matching the targets with dollars. Some targets are
3 developed locally in the timber management plans; for
4 example, hectares planted or hectares seeded. So the
5 fact that expectations are defined ensures that people
6 follow directions and strive to meet targets.

7 Now, this is common to all management
8 units brought about by the timber management plans
9 through operational audits, through work program
10 planning, Ministry work program planning - I think you
11 heard about that in Panel 1 - and for MNR staff, the
12 MNR performance appraisal process that was talked about
13 in Panel 8.

14 Obviously that particular item doesn't
15 apply to FMAs. FMAs, we are -- or, of course have to
16 follow timber management planning, they are audited and
17 their work plans are developed under the Ministry work
18 management planning system.

19 Now, you have to know how to do those
20 things, so training and education is the next element.
21 Panel 8 talked at length about this and it was also the
22 subject of an interrogatory for this panel.

23 MS. MURPHY: Mr. Chairman, that is at
24 Exhibit 924 which includes interrogatories with respect
25 to this matter and a number of attachments that pull

1 together information that has been provided from time
2 to time in one place. So it is Exhibit 924.

3 MR. CARY: If people know the reasons for
4 the rules, they follow rules better we find. As
5 explained in Panel 15, everyone who is involved in the
6 preparation of a timber management plan is expected to
7 attend a timber management planning course. So this is
8 common then to all three management units.

9 Our response to an interrogatory from the
10 Ontario Federation of Anglers & Hunters, their No. 8,
11 confirmed this. And also this is the subject, training
12 and education, is the subject of term and condition No.
13 58 which commits the Ministry to developing suitable
14 training programs.

15 THE CHAIRMAN: When you say that all
16 people involved in the timber management planning are
17 expected to attend the training courses, have you ever
18 given any thought to granting some kind of certificate
19 and thereafter only certified people can take part in
20 that process?

21 MR. CARY: I wish I could bring back
22 Panel 15 to answer that question. I don't know what
23 they thought of. I don't believe that that exists.
24 It's perhaps a good suggestion.

25 MS. MURPHY: The timber management

1 planning training course was discussed by Panel 15 and
2 a number of the people on that panel are actually
3 lecturers at that course and the most recent manual -
4 the manual is being updated basically every six months
5 or so as the new course is put together - the most
6 recent of the version of the manual was provided to the
7 Ministry of the Environment and to Ontario Federation
8 of Anglers & Hunters and can be found in the reading
9 room.

10 And perhaps if you want to ask about the
11 formalization of that, Mr. Bisschop will be back in
12 Panel 17 and might be better able to deal with that.

13 THE CHAIRMAN: The reason I am raising
14 it, Ms. Murphy, is with respect not so much to the MNR
15 employees over whom you can direct to attend, but the
16 company employees that you wish to have this kind of
17 training, particularly the company foresters, and who
18 may or may not attend for a variety of reasons.

19 MR. CARY: I should remind you that all
20 plan authors are registered professional foresters.

21 THE CHAIRMAN: But that doesn't mean
22 necessarily they have had training in timber management
23 planning, they may have a university degree --

24 MR. CARY: The plans have to be signed
25 off by our peers.

1 THE CHAIRMAN: No, but, Mr. Cary, I would
2 assume that they may have a university degree in
3 forestry, but that doesn't necessarily mean that they
4 are up to date on the timber management planning
5 processes which would be addressed in these specific
6 training courses.

7 MS. MURPHY: Q. And I believe that Mr.
8 Tworzyanski or Dr. Osborn, and I am not entirely sure,
9 has at least one of you been involved in the past in
10 organizing the timber management planning workshop?

11 MR. TWORZYANSKI: Yes.

12 Q. And did you have any difficulty
13 getting people to attend?

14 A. No, we didn't. I don't recall if the
15 numbers -- the numbers are well over 500 people that
16 have been trained in, I believe, three -- or is it
17 four?

18 Q. The evidence was in Panel 15 and I
19 can't recall if they have had three or four, but in any
20 event --

21 THE CHAIRMAN: I don't want to prolong
22 this.

23 MS. MURPHY: That's fine.

24 THE CHAIRMAN: But obviously you have got
25 a requirement in the Act, the Crown Timber Act, that

1 you have to be a registered forester in order to do
2 certain things, sign off a plan.

3 It might be nice if you also had a
4 requirement that said: If you are going to conduct
5 timber management planning, you also have to have some
6 kind of certification; if you don't have it, meaning
7 you didn't attend, you can't do it. And that maybe
8 ensures that the proper level of training at least has
9 been conducted.

10 MS. CRONK: Mr. Chairman, I simply rise
11 to point out, as you would no doubt anticipate, that
12 there is a great wealth of evidence you're yet to hear
13 and that includes evidence about the management
14 expertise and professional and in-the-field training of
15 Industry people as well as the MNR people.

16 THE CHAIRMAN: Right.

17 MS. CRONK: So I make no comment on what
18 you're proposing, save to say that professionalism is
19 very much a definition in all quarters and you will
20 hear evidence about that.

21 THE CHAIRMAN: Thank you, Ms. Cronk.

22 MRS. KOVEN: I would also observe that
23 the evidence that we have heard about the way in which
24 the timber management planning team operates that the
25 Ministry has a great deal of responsibility to ensure

1 that the author of the timber management plan, whether
2 he or she is from the company or the MNR, is fairly
3 well informed about where the requirements of the
4 timber management planning exercise stand.

5 That may not be any replacement for
6 formal training in the timber management planning
7 process, but it certainly seems to me that the Ministry
8 is responsible at that point for ensuring that the plan
9 author has all the information that should be available
10 to him.

11 MS. MURPHY: And I don't think we would
12 argue with that at all. I just would like to, for the
13 satisfaction of this panel, ask you to ask this
14 question to Panel 17.

15 We didn't think we would have very many
16 opportunities to do that, but Mr. Bisschop has had
17 extensive experience in organizing those sessions and
18 can probably deal with that one to your satisfaction
19 better than people that haven't had a chance to be
20 involved.

21 THE CHAIRMAN: Well, we will probably
22 forget. Can we ask you to ask that question of Mr.
23 Bisschop in the next panel?

24 MS. MURPHY: Certainly. Where is Mr.
25 Freidin.

1 MS. BLASTORAH: I will undertake to
2 advise him.

3 MS. MURPHY: Ms. Blastorah undertakes to
4 advise him.

5 THE CHAIRMAN: Thank you.

6 MS. BLASTORAH: He can do that.

7 MR. CARY: Supervision is the third
8 element of indirect compliance monitoring and certain
9 activities such as tree planting, site preparation and
10 road construction are supervised on site by the Crown
11 on Crown management units and on company management
12 units.

13 On company management units where the
14 company enters into a regeneration agreement or where
15 road construction is undertaken by the companies, the
16 company supervises these operations.

17 As you have heard on FMAs, the FMA holder
18 is responsible for the results of their activities. So
19 they supervise their operations.

20 Public reporting. This comes back to
21 what I said earlier, knowing that you will be required
22 to report on what you did, and also to justify the
23 results for most compliance. It is also important for
24 us to communicate to the public about the activities
25 that we undertake and the reasons for the levels that

1 we achieve and the results.

2 Four, major elements of public reporting
3 are discussed in this EA in then the following reports:
4 The annual timber management planning reports - and you
5 have heard about those from Panel 15 - the report of
6 past forest operations. Now, a part of this report
7 directly links to compliance in that it reports what
8 took place on a management unit in areas of concern,
9 and I will be talking more about that later today.

10 The annual report of timber management is
11 a third public report and the state of the forest
12 report, both these reports will be discussed by Dr.
13 Osborn.

14 In addition, certain summary reports are
15 published now and some of them have been introduced
16 into evidence, for instance, the Ministry annual
17 statistics, annual reports of FMAs, the Minister's --
18 the Minister of Natural Resources annual report.

19 THE CHAIRMAN: Of those last mentioned
20 reports, is there any thought of discontinuing them or
21 would they be in addition to the ones mentioned here?

22 MR. CARY: They will be in addition.

23 There is no thought currently to discontinuing those.

24 And for your information, the FMA reviews
25 that Mr. Tworzyanski will be telling you about are also

1 public reports.

2 The fifth component of indirect
3 compliance monitoring is the Class EA review, and this
4 review will report on compliance with the terms and
5 conditions of the approval and Panel 17 will be giving
6 you details of that, of the Class EA review.

7 THE CHAIRMAN: And is that going to be a
8 report, without getting into 17, essentially under the
9 supervision of the Ministry of the Environment, or MNR?

10 MR. CARY: I believe it's going to be
11 prepared by MNR.

12 MS. MURPHY: Or the Ministry of the
13 Environment?

14 MR. CARY: A. Yes.

15 THE CHAIRMAN: For the Ministry of the
16 Environment.

17 MS. MURPHY: That's correct.

18 MR. CARY: Yes.

19 MS. MURPHY: Once you review the terms
20 and conditions that we have proposed, you will see that
21 a number of the terms and conditions that are set out
22 suggest that there would be a report at the time of the
23 review of this environmental assessment on the status
24 of those matters.

25 Those particular matters are things that

1 require ongoing development and so that the proposal is
2 that those things that require ongoing development, the
3 progress would then be reported at the review of this
4 class environmental assessment, which we in our jargon
5 call the fifth year review.

6 THE CHAIRMAN: Okay. The Board would
7 like to request the Ministry of the Environment to give
8 some consideration as to whether they would ever be
9 reporting on the compliance with the Class EA.

10 In other words, as we understand it, MNR
11 is required under certain terms to report to MOE as to
12 the status of compliance vis-a-vis conditions of
13 approval which are part of the approved Class EA and it
14 goes into the bowels of MOE perhaps never to reappear
15 in public form, and it might be a consideration of MOE
16 to thereupon report on what the results were of the
17 compliance with the Class EA conditions.

18 That is something that the Board even
19 receives inquiries from the public as to whatever
20 happened to conditions of approval that we might have
21 imposed and, generally speaking, we have no idea. Our
22 function ends with the imposition of those conditions.

23 MS. SEABORN: Mr. Chairman, I will
24 certainly raise that issue with my client. There's
25 just one question of clarification. When you say an

1 MOE report, to whom would that report be addressed?

2 THE CHAIRMAN: Well, a public report,
3 like a report on the status of compliance of conditions
4 which are part of an approved Class EA.

5 In other words, a report so that the
6 public could come in and say: With respect to a
7 particular timber management plan which was processed
8 pursuant to an approved Class EA and obviously subject
9 to conditions of approval, at such time as the plan
10 holder, whether it's an FMA holder or the Ministry of
11 Natural Resources, has to report certain things to MOE,
12 MOE then advises the public as to the status. Because
13 reporting to MOE doesn't necessarily indicate what
14 action MOE intends to take, assuming that some of those
15 conditions require further action, in some cases may be
16 even prosecution.

17 MS. SEABORN: That clarification is
18 helpful, Mr. Chairman. I just wanted to be clear that
19 you weren't indicating that you didn't envisage this
20 being a report back to the Environmental Assessment
21 Board per se or back to this panel on the compliance?

22 THE CHAIRMAN: No, no. I mean, that is
23 another aspect that I would suggest, Ms. Seaborn, is
24 being considered in terms of possible revisions to the
25 legislation, as to what happens with conditions imposed

1 by the Board and is there any follow-up mechanism which
2 might involve the Board in the event that certain
3 conditions are not complied with. Certainly under the
4 existing legislation there is none.

5 MS. SEABORN: I can advise you, Mr.
6 Chairman, that in terms of compliance with terms and
7 conditions from an environmental assessment or a class
8 environmental assessment, there is not, as you pointed
9 out, a formal report at present to the public or to any
10 other party.

11 THE CHAIRMAN: Right. And that is
12 something that we would suggest might well form part of
13 a recommendation of this Board after this exercise.

14 MS. CRONK: Mr. Chairman, I make no
15 comment on the suggestion itself at this point except
16 to point out, as Mr. Cassidy just did to me, that
17 Section 39 of the Act would have to be taken into
18 account in doing that.

19 It may very well be that both for
20 practical and policy reasons a report of that kind, the
21 value of a report of that kind having to do with
22 compliance with conditions would be arguable where, for
23 example, it was contemplated that an offence -- the
24 allegation of an offence had been committed were to be
25 made, in essence, it would be arguably perhaps a

1 prejudgment of compliance.

2 In any event, I can foresee legal
3 arguments and potential legal difficulties. Beyond
4 that, I don't have any instructions. I don't take a
5 position either way, but I do put forward the caution.

6 THE CHAIRMAN: No, we can appreciate some
7 of the problems, but what we are saying is, is that if
8 a report is required to the Ministry of the Environment
9 detailing the degree of compliance with conditions
10 pursuant to a Class EA, then presumably the Ministry
11 takes some form of action; it may take no action, it
12 may just absorb the information and leave it at that,
13 it may suggest or further amend the conditions.

14 For instance, the Ministry has the power,
15 of course, I would presume under a Class EA like any
16 other environmental assessment, to amend conditions
17 from time to time, and presumably could even go so far
18 as to - I haven't thought this out - perhaps impose a
19 stop order in certain cases if a particular activity
20 were being carried on that it didn't wish to be carried
21 on any further. Maybe it can't under the Environmental
22 Assessment Act, I am not sure at this point.

23 But surely the public has a right to
24 know, if compliance monitoring is going to mean
25 anything, as to what happened. You know, if the whole

1 purpose of the exercise in terms of compliance
2 monitoring is to see whether or not parties complied
3 and how well they did in that compliance, the public
4 should have a right to know the results. And we are
5 not convinced that a mere reporting by the Ministry or
6 the FMA holder back to the Ministry of the Environment,
7 without some indication of what the Ministry of the
8 Environment which has responsibility under the
9 legislation intends to do, goes far enough.

10 Again, you know, we are not suggesting
11 any definitive framework in which all of that could be
12 carried out at least at this stage, we certainly might
13 in our decision, but that is an area that there is a
14 great deal of public concern about.

15 MR. MARTEL: It was on the radio
16 yesterday, the Minister of MOE was on a phone-in
17 program yesterday and a goodly number of the public
18 complained that they in fact, although the orders were
19 issued, that in fact they hadn't been carried out. And
20 I think the Minister was encouraging people to continue
21 to call to make sure that those things were complied
22 with.

23 I am not sure if that is the right way of
24 approaching those matters.

25 MS. CRONK: My only point, Mr. Martel, is

1 that you might ultimately, if you are so inclined
2 having heard more evidence on the matter, to invite
3 submissions as to the implications of that form of a
4 reporting mechanism given Section 39. I'm
5 suggesting...

6 THE CHAIRMAN: No, we certainly will, and
7 we are just throwing it out, and that is why I prefaced
8 all of these with perhaps Ms. Seaborn indicating to the
9 Ministry that this is an area of concern and that we
10 think, in a general way, there should be more
11 information in the hands of the public with regards to
12 the results of compliance monitoring.

13 Let's leave it at that.

14 MS. SEABORN: Thank you, Mr. Chairman.

15 MS. MURPHY: Well, may I just make two
16 comments before we carry on, two very general ones.

17 The first one is that it is clear that
18 there are a number of people who need to know whether
19 and when they are complying with the terms and
20 conditions of approval including the proponent. The
21 proponent, the Ministry of the Environment, the public,
22 whoever is interested, needs to be able to ascertain
23 fairly easily whether terms and conditions are being
24 complied with, and I would ask you to consider that and
25 keep that in your minds when you look at draft terms

1 and conditions.

2 That is one of the things that we were
3 very concerned about in writing draft terms and
4 conditions, that they be clear, unambiguous and that
5 one can tell, the Ministry of the Natural Resources as
6 well as anyone else that has to comply with these
7 conditions and other people, what exactly is required.

8 THE CHAIRMAN: Well, the Board will take
9 that into account because it's one of the Board's
10 overriding concerns - and it doesn't apply just to this
11 case - and, that is, we hear a lot of evidence in terms
12 of these approval applications and we decide to the
13 best of our abilities as to what kinds of conditions of
14 approval, if there is going to be an approval, should
15 be imposed, and we do it on the basis that if we did
16 not expect those conditions to be complied with or if
17 they are so ambiguous that they in fact can't become
18 complied with, we might not have granted the approval
19 in the first place.

20 We are going on the assumption that when
21 we impose conditions of approval they are not frivolous
22 and they are meant to be complied with, and there is
23 generally a reason why they have been imposed in the
24 first place. If the particular proposed condition has
25 no practical use, why impose it in the first place.

1 And, generally speaking, the Board does not.

2 But it doesn't serve the public interest
3 in the Board's view if, after imposing conditions, they
4 are not in fact complied with and they are not followed
5 up or, if they aren't complied with, further measures
6 aren't taken to remedy whatever the condition initially
7 was to have rectified or controlled, et cetera.

8 And this is an area the Board would
9 suggest in this whole environmental assessment or, even
10 EPA, OWRA type approval process that exists in this
11 province that does not give everyone the degree of
12 comfort in terms of compliance that perhaps should be
13 out there.

14 And because this whole matter in this
15 application before us deals very substantially with a
16 planning process as opposed to a site-specific,
17 project-specific approval, it is of even more concern
18 to the Board, I would suggest, that the conditions of
19 approval that are imposed, if approval is granted, are
20 done in a framework which can be followed up, monitored
21 in terms of compliance and the public notified as to
22 the results, as well as the parties, so that everyone
23 knows where they stand, they know what their
24 obligations are and they know that if they don't comply
25 what in fact may happen.

1 That is an area that we would like to
2 spend some time on and the parties will have an
3 opportunity at some point in the case, if not prior to
4 argument, to make submissions as to that whole area.

5 MS. MURPHY: And the discussion arose
6 originally because we were talking about the fifth year
7 review that we are proposing for this class
8 environmental assessment, and you were asking who the
9 Ministry of Natural Resources would report to.

10 THE CHAIRMAN: Well, I think it all got
11 lost in which report you were talking about, we got
12 into general discussion.

13 MS. MURPHY: That's fine. But the point
14 there, just to close the loop, so to speak. It is our
15 view that that report, the fifth year review, would be
16 treated in a way not unlike any other environmental
17 assessment, it would certainly be a public report.

18 THE CHAIRMAN: Yes.

19 MS. MURPHY: Thank you.

20 THE CHAIRMAN: I think maybe we are going
21 to take a break at this point for 20 minutes.

22 Thank you.

23 ---Recess taken at 11:00 a.m.

24 ---On resuming at 11:25 a.m.

25 THE CHAIRMAN: Thank you. Be seated,

1 please.

2 I think counsel are aware, we handed out
3 the Procedural Directives during the break. For those
4 of you who do not have a copy, we will provide one
5 later, if we don't have any lying around.

6 And we would instruct the court reporter
7 to kindly reproduce the Procedural Directives in the
8 transcript at some point, so that everyone who is
9 monitoring the transcripts will have the benefit of
10 these.

11 Thank you.

12 ---(Procedural Directives appended)

13 MS. MURPHY: Q. Mr. Cary, you were going
14 to go on and pick up the last item on the list which is
15 the discussion of legislation and enforcement; is that
16 correct?

17 MR. CARY: A. That's correct. Now, as I
18 said before, legislation and enforcement is the final
19 element of compliance monitoring should non-compliance
20 occur. There were a number of interrogatories that
21 asked what the Ministry does when non-compliance is
22 found, specifically the No. 7 from the Ministry of the
23 Environment and No. 15 from the Ontario Federation of
24 Anglers & Hunters.

25 With specific reference to Ministry of

1 Environment No. 7 which asked us what we would do if
2 non-compliance occurred, we replied that there were
3 various ways to handle that situation.

4 The first one would be, we could direct
5 them to stop operations. A second would be to instruct
6 to mitigate or remedy. A third way would be to lay a
7 charge or assess a penalty under the appropriate
8 legislation. Cancellation of licences or withdrawal of
9 work permit would be another avenue. The Ministry
10 could undertake remedial action itself, and then
11 another way would be to conduct discussions to promote
12 understanding and cooperation, and these could include
13 written warnings or verbal warnings.

14 So we replied that we had an array of
15 ways to handle non-compliance.

16 MR. MARTEL: With MNR doing the remedial
17 action, would there be a charge back then? If MNR did
18 the actual work, the remedial work you would then
19 charge back to whoever -- if it were on, let's say an
20 FMA or company management unit, would you charge that
21 back to the responsible party?

22 MR. CARY: Under current legislation that
23 is very difficult. You will hear about some proposals
24 that speak exactly to that matter.

25 MS. MURPHY: And perhaps at this point,

1 for the purpose of the record, I will give you some
2 indication of the legislation that Mr. Cary is speaking
3 to.

4 First of all, just for the record, there
5 was an exhibit, Exhibit 528, that was a response to an
6 interrogatory and subsequently an undertaking to the
7 Ministry of the Environment and, in that exhibit, there
8 is a list of all legislation that has some bearing on
9 the timber management activities and, if you will
10 recall, the list which described a series of acts and
11 gave some indication of their potential effect in
12 timber management, that there was a list of 29 acts.

13 For the purposes of this panel, the acts
14 that are most relevant, and I will speak to three
15 before I speak to the Crown Timber Act. The three that
16 are most relevant are the Public Lands Act, that is
17 Ontario legislation, the Lakes and Rivers Improvement
18 Act, again Ontario legislation, and the Fisheries Act
19 which is federal legislation and, in large measure, is
20 administered in Ontario by the Ministry of Natural
21 Resources. And in Exhibit 918 we have reproduced
22 relevant sections of those three acts and, in addition,
23 the entire Crown Timber Act.

24 For your notes, with respect to the
25 Public Lands Act, I would draw your attention to the

1 following sections: Section 25 which deals essentially
2 with the deposition of materials on Crown lands and the
3 removal of those materials, Section 49 and 51 which
4 deals with the ability to put use restrictions on
5 forest roads, and Section 13 recently amended, and you
6 heard a good deal about that I understand in Panel 14.
7 That is the section that deals with the multi-purpose
8 work permit and that provides, in addition, for fines
9 for offences where people have undertaken activities
10 without a permit.

11 You also heard about some of the
12 administration of the Lakes and Rivers Improvement Act
13 and, again, certain sections have been reproduced for
14 your information. Essentially Section 14 of that Act
15 requires that if a structure constitutes a dam; that
16 is, it is in water and can hold back water, it has to
17 be approved by the Minister of Natural Resources and
18 the Minister may refuse to approve that structure and,
19 essentially, those structures deal with bridges and
20 water crossings. And you will have heard a good deal
21 about that as well in Panel 14.

22 That legislation in Section 20 provides
23 for fines for failing to obtain approval, and Section
24 15 of that Act provides for the removal of unauthorized
25 works and also provides that the Minister may remove

1 and may get costs. And this is one of the things that
2 you were interested in, Mr. Martel.

3 The Fisheries Act, the relevant sections
4 I bring to your attention, and I think from time to
5 time you have heard a good deal about this legislation
6 as well, primarily I believe from Mr. Ward. I bring to
7 your attention Section 35 and 36 of that Act which
8 essentially requires that no person carry on work or
9 undertaking which results in harmful alteration,
10 disruption or destruction of fish habitat, or allows
11 materials to enter waters are frequented by fish.

12 That legislation is, as I say,
13 essentially administered in Ontario by the Ministry of
14 Natural Resources and it provides for fines for harmful
15 work and also provides for the taking of remedial
16 rehabilitative action, and those sections are found in
17 Sections 40 of that Act.

18 And in order to expedite matters, we have
19 also provided, first of all, the Crown Timber Act in
20 its entirety and, in addition, a document that
21 describes essentially the Crown Timber Act as it
22 applies today, and I believe we have made that Exhibit
23 919.

24 THE CHAIRMAN: That is the correspondence
25 regarding the Crown Timber Act.

1 MS. MURPHY: Well, the memorandum about
2 the Crown Timber Act is attached.

3 THE CHAIRMAN: Oh yes, sorry. That's
4 right.

5 MS. MURPHY: And that memorandum, for the
6 purposes of the people involved in this hearing,
7 describes the current Crown Timber Act and how it works
8 and it also provides at the end some discussion about
9 proposed changes to the Crown Timber Act.

10 And just for your notes, I will indicate
11 that in the current Act the sections of primary
12 interest in this panel are essentially Sections 26
13 which deals with management planning, Section 28, 31
14 and 32 which deals with changes to operations, varying
15 and cancelling licences, and so forth, and Section 48
16 which sets out the current penalty structure under the
17 Crown Timber Act.

18 Now, I would advise the parties in that
19 document and earlier that there were some proposed
20 amendments to the Act and that that is still in
21 process, but we have provided a short outline of the
22 major salient points.

23 Q. And, Mr. Cary, first of all, can you
24 advise what your involvement has been in the
25 development of the proposed changes to the Crown Timber

1 Act?

2 MR. CARY: A. I was not a member of the
3 committee that has developed these proposed amendments;
4 however, I did attend some committee meetings two years
5 ago.

6 Since then, in the last 18 months, I have
7 been tracking the development of the proposed
8 amendments. So I haven't been directly involved, and I
9 don't know the details -- all the details of these
10 amendments.

11 MS. MURPHY: In any event, at this point
12 the legislation is -- or the Bill is yet to be drafted
13 or it is not completed, it's in the hands of
14 Legislative Council and we expect to see it shortly.
15 In any event --

16 THE CHAIRMAN: Sorry. Wouldn't it be a
17 consideration to await amending that Act pending a
18 decision of this Board? And the reason I say that is
19 because much of what we are dealing with in this
20 application before us deals with matters, some of which
21 are required by provisions of the Crown Timber Act, and
22 if there is going to be suggestions from this Board as
23 to how the legislation might be tightened up or amended
24 or altered in some way, because this Board has had the
25 advantage of having a very thorough review of the whole

1 timber management planning process and the one that
2 will likely be in force for the next number of years,
3 it would seem to be, you know, putting the cart before
4 the horse to have the legislation amended and then only
5 to find out that the Board might suggest something that
6 is different and does not fit in well with the Act or
7 the amendments.

8 MS. MURPHY: Well, Mr. Chairman, if I
9 could say, first of all, two things: What we would
10 like you to do is see broadly the areas that have been
11 identified as those that the Ministry feels need change
12 to improve its ability to administer the Crown Timber
13 Act.

14 I think you will appreciate that some of
15 those changes are fairly important and, in particular,
16 some that may be required due to the requirements of
17 the Charter of Rights and Freedoms, and we would like
18 you to have a look at what those are and we would like
19 you to bear in mind that at this point in time the
20 Minister of Natural Resources, of course, has to take
21 this proposed legislation to the government and then
22 the government has to ensure that that gets first
23 reading in the House.

24 As you are well aware, the next steps are
25 going to depend on those people in the House and how

1 they would like to deal with it. And it may well be
2 that they would be interested in your views, but it's
3 difficult for us to put before you the views the
4 Ministry of Natural Resources without having something
5 formal that is going forward.

6 If I could just ask Mr. Cary to show you
7 at this point these eight sort of basic points and we
8 can explain to you what the situation appears to be.

9 THE CHAIRMAN: Very well.

10 MR. CARY: I would like then to draw your
11 attention to page 5 of Exhibit No. 932. This list of
12 eight features are the most prominent of our suggested
13 changes to the Act. There are other changes which we
14 are going to suggest and they are of a housekeeping
15 nature, updating, but I would like to go through them
16 and highlight them.

17 The first one is the application of
18 timber management planning requirements. Now, we want
19 to make it absolutely clear that no timber management
20 operations may be undertaken on management units unless
21 previously approved in a timber management plan, and
22 this will apply to all licensees and to all timber
23 management activities.

24 Currently the Act says that licensees are
25 to conduct planning as required, and it doesn't

1 specifically mention the Crown's obligations. So we
2 want to make sure that this particular amendment or
3 change -- suggested change applies both to Crown and to
4 companies.

5 Historically, the Act has emphasized
6 cutting, and now we wish to make sure that it mentions
7 all the timber management activities and also that it
8 applies to all operators on all management units. So
9 that is the reason for that first suggested amendment.

10 As you know, we have produced a new
11 Timber Management Planning Manual and it contains some
12 terminology that doesn't exist in the Act today. So we
13 want to propose that the language in the management
14 planning sections of the Act will be amended to refer
15 to the new planning requirements for timber management
16 plans and annual work schedules.

17 MS. MURPHY: Q. And if I might give an
18 example. As I understand it, the current Crown Timber
19 Act requires annual plans, and the current timber
20 management planning manual emphasizes planning on the
21 five-year level and says that the annual documentation
22 can only come from the timber management plan
23 previously approved; is that right?

24 MR. CARY: A. That's correct. So here
25 we are after current terminology, up to date and really

1 to suit the current planning process.

2 The next Item No. 3 on the overhead,
3 Timber Management Planning Manual/FRI Manual. We feel
4 that the publishing of manuals for timber management
5 planning and for forest resource inventory procedures
6 should be mandatory. Currently in the existing Act the
7 production of a Timber Management Planning Manual is
8 discretionary. We wish to make that mandatory and,
9 also, we would like to produce a new Forest Resources
10 Inventory Manual.

11 Q. And if I might just stop you there.
12 As I understand the current legislation when it does
13 talk about a Timber Management Planning Manual, it
14 suggests that that must be used by licensees; is that
15 right.

16 A. Yes, it does.

17 Q. It does not then make that explicitly
18 at least a requirement in Crown management units to use
19 that document?

20 A. That's correct.

21 Q. Thank you.

22 A. The fourth point speaks to licensees
23 planning responsibilities. And we feel that the
24 requirement for timber licensees to engage in timber
25 management planning and in the preparation of annual

1 work schedules must be clearly stated. So we would
2 like all licensees to produce plans and annual work
3 schedules for all their operations.

4 For example, formerly or in the existing
5 Act the Crown wrote the renewal and maintenance
6 portions of the plans. We feel that the involvement of
7 the licensees means better implementation of the plan,
8 it's easier.

9 Q. And would you consider that to apply
10 to very small licensees; licensees, for example, with
11 district cutting licences operating on Crown management
12 units?

13 A. It wouldn't apply to the very small
14 licensees. So we are talking about the larger
15 licensees.

16 MR. MARTEL: How would you define that?
17 How would you define that in an Act?

18 MR. CARY: In the Act?

19 MR. MARTEL: Yes, the limitations, what
20 section is that?

21 MR. CARY: There is a section of the
22 Act -- in the licensing section of the Act a district
23 cutting licence is described, and there is an area, I
24 believe it's 160 acres.

25 MS. MURPHY: That is still in acres at

1 this point in time.

2 MR. CARY: And it is still in acres, so
3 licences...

4 MR. MARTEL: Anything below that would
5 not...?

6 MR. CARY: That's correct.

7 MR. MARTEL: Okay.

8 MR. CARY: The fifth point, to stop or
9 vary operations. The Ministry will have express
10 authority to take action which will limit loss or
11 damage from timber operations which are contrary to the
12 intent of the plan. We believe we have this authority
13 currently but we wish to make it very clear.

14 THE CHAIRMAN: Is there going to be some
15 attempt at integration between MNR's enforcement
16 responsibilities and MOE's enforcement responsibilities
17 under an approved Class EA?

18 I know under the Crown Timber Act you are
19 going to have broader responsibilities for other things
20 other than other activities which are not covered
21 necessarily by a Class EA.

22 MR. CARY: Yes.

23 THE CHAIRMAN: But where you are dealing
24 with the same matters for which the Class EA has been
25 approved and conditions are applied to that, the

1 enforcement responsibilities there would be essentially
2 under the Environmental Assessment Act; would they not?

3 MS. MURPHY: Well, if I might, Mr.
4 Chairman, I think the first point is that the proponent
5 here, as the Ministry of Natural Resources, needs not
6 only the ability to enforce but also some fairly clear
7 authorities. Obviously in setting out terms and
8 conditions of approval, they will have to be things
9 that the Ministry can deliver.

10 So that, No. 1, the authorities to do
11 things have to be set out obviously in the legislation;
12 secondly, that legislation and the enforcement of it,
13 of course, is administered by the Minister of Natural
14 Resources. I think you are discussing the enforcement
15 responsibilities of the Ministry of the Environment and
16 those, of course, would be under the Environmental
17 Assessment Act.

18 And you just reminded me, there was in
19 fact a question that was posed in an interrogatory
20 about that very matter asking about the Ministry of the
21 Environment's enforcement mechanisms, and I had asked
22 Ms. Seaborn to help prepare a reply and she has in fact
23 given me a draft and we may be able to respond to it
24 that way.

25 THE CHAIRMAN: Okay. There is just an

1 overlap situation, and if you are going to change the
2 Crown Timber Act, you know, some thought should be
3 given as to who has got the responsibility and to make
4 sure there is not a contradiction of purpose between
5 the two agencies in terms of enforcement.

6 MS. MURPHY: And certainly the same
7 Cabinet would be interested in not having contradiction
8 of purpose between the two legislations.

9 THE CHAIRMAN: That's right.

10 MS. MURPHY: Q. And you were talking
11 about the ability or the express authority to take
12 action which will limit loss or damage from timber
13 operations. And were you finished with that one?

14 MR. CARY: A. Yes, I was.

15 Q. I might then just add that in this
16 context, timber operations would extend to things other
17 than cutting; is that right?

18 A. Yes.

19 Q. And that is because it would include
20 all timber management operations?

21 A. Yes, that's correct.

22 Q. Thank you.

23 A. The sixth point is the enforcement by
24 judicial process. It's proposed that the current
25 administrative penalty system will disappear and be

1 replaced by an offence section which will be enforced
2 by way of the Provincial Offences Act.

3 The current penalty system we believe is
4 outmoded, it's an internal administrative process and
5 we wish to put it now into a judicial forum. I am told
6 that the Charter of Rights and Freedoms has ordered
7 this amendment.

8 Q. Well, I don't know if you can put it
9 exactly that way, but this is very old legislation, as
10 you can appreciate, in particular this part, and the
11 legislation as it currently stands is drafted in a way
12 that current legislation would simply not be.

13 It provides that the penalty structure
14 for doing such things, as what's called under the Act,
15 trespass, for doing things that one is not supposed to
16 do, the penalty structure now is a decision by the
17 Minister to impose on that person a penalty which is
18 actually a multiple of the Crown dues for that wood.

19 That, as we understand it, confuses
20 criminal and civil sanctions and, as we have been
21 advised, may offend fundamental fairness or the Charter
22 of Rights and Freedoms.

23 And for that purpose, as I understand it,
24 the idea is to separate the quasi-criminal aspects of
25 this from the civil aspects of this to clear up those

1 problems and to bring the legislation into conformity
2 with current legislative drafting.

3 MR. CARY: A. The seventh feature,
4 maximum fines. Maximum fines will be provided and some
5 of those fines are substantially higher than those in
6 the current legislation.

7 As you have heard Ms. Murphy say,
8 penalties are assessed at the moment for the most
9 common -- and they are assessed for the most common
10 contradiction of the Act such as wasteful practices and
11 unauthorized cutting.

12 The fines -- sorry, the penalties
13 currently are based on the value of the wood involved.
14 The proposed change would relate the fines to the
15 severity of the offence rather than to the value of the
16 wood.

17 MS. MURPHY: And, as I understand it, the
18 proposal then would follow what you would be more
19 familiar with perhaps, Mr. Chairman, certainly Mr.
20 Martel, with legislation that would set out offences
21 with maximum penalties rather than the current
22 situation. It would be more in line with what current
23 drafting would provide.

24 THE CHAIRMAN: To be administered what,
25 by the provincial court structure?

1 MS. MURPHY: Yes, it would be a normal
2 provincial court situation.

3 MR. CARY: And finally, remedial action
4 and recovery of costs. And, Mr. Martel, that is what I
5 talked about earlier when I was referring to the Crown
6 Timber Act. This proposed amendment would mean the
7 Minister will have express authority to take or order
8 remedial action and to recover the costs incurred due
9 to unauthorized timber management operations.

10 MS. MURPHY: Q. And that would be all
11 timber management operations, not just cutting?

12 A. All, yes, not just cutting.

13 MS. MURPHY: And as Mr. Cary responded
14 actually to you earlier, Mr. Martel, as I understand
15 it, it is the view of Legal Services Branch that that
16 authority is implicit in the Act right now but it is
17 not explicit, and I think that, as I understand it,
18 that is the reason for asking for having this section
19 made explicit.

20 THE CHAIRMAN: I take it that that
21 section or that proposed amendment does not apply to
22 private individuals who feel aggrieved by some
23 unauthorized activity having taken place and who want
24 compensation?

25 MS. MURPHY: I would suggest that if you

1 are talking about private individuals, there are
2 probably two situations where they might be interested:
3 The first one, of course, if you have a normal offence
4 provision, then you have the normal ability for a
5 citizen to deal with provincial offences.

6 THE CHAIRMAN: Yes, but that is usually
7 to get the activities stopped.

8 MS. MURPHY: Fair enough.

9 THE CHAIRMAN: What about compensating
10 them for what the activity did to their property or
11 rights, or whatever?

12 MS. MURPHY: You have to appreciate,
13 first of all, that what this section is dealing with is
14 damage to Crown land, so we are talking about damage to
15 public land--

16 THE CHAIRMAN: Yes.

17 MS. MURPHY: --and not damage to private
18 land.

19 THE CHAIRMAN: Right.

20 MS. MURPHY: Right. I would also
21 suggest, however, if you were an individual who felt
22 that some damage to public land beside you had caused
23 you some injury --

24 THE CHAIRMAN: Well, it's the usual
25 tourist operator situation, okay, an unauthorized

1 cutting ruins somebody's business, clearcutting to a
2 lake drives away his customers; what recourse does he
3 have?

4 MS. MURPHY: And I would suggest, and in
5 fact we will be probably be discussing this a little
6 later because Mr. Edwards and I have had some
7 discussion about this matter, and I expect that we will
8 be discussing it later.

9 But I would suggest in that situation
10 that this person has the normal ability to commence an
11 action against and, in this case, I would suggest to
12 you the licensee, and the identity of the licensee on
13 all Crown land is recorded and known and that licensee
14 is responsible for the operations on the licence area.

15 So they are a known person.

16 THE CHAIRMAN: With a caveat that the
17 supervision of the licensee is the responsibility of
18 the Crown. So what happens when the Crown doesn't
19 exercise its supervisory functions appropriately?

20 MS. MURPHY: Well, I would assume if
21 someone felt that was the situation, they would take
22 the normal course and sue the Crown. It does happen.

23 THE CHAIRMAN: As well.

24 MS. MURPHY: I don't think they need to
25 have the authority to do that in the Crown Timber Act.

1 THE CHAIRMAN: Right. Okay.

2 MS. MURPHY: I can advise you from
3 personal experience, sir, it does happen.

4 MR. CARY: Lastly, in addition to the
5 items I have been talking about, there will be some
6 housekeeping changes, and you heard about one of them,
7 acres will be converted into hectares. And also, of
8 course, the regulations will have to be altered to make
9 them consistent with the proposed changes to the Act.

10 Ms. Murphy, I think that comes to the end
11 of...

12 MS. MURPHY: It comes to the end of that
13 section, and Mr. Cary is now going to begin another
14 section about area inspections.

15 MR. CASSIDY: Before that happens, can I
16 just ask a question of clarification. The evidence we
17 have just heard on the Crown Timber Act, is it the
18 Ministry's position - and, Ms. Murphy, you can answer
19 this I believe rather than the witness - is it the
20 Ministry's position that it's asking the Board to pass
21 judgment, or in somehow approve all of the evidence
22 that we've just heard; that is, the proposed amendments
23 to the Crown Timber Act?

24 I ask that question because there is
25 obviously nothing in the terms and conditions that asks

1 the Board to approve that. It may have been by just
2 way of background and I may have missed that comment;
3 and, if that is the case, I would like to know that
4 because that obviously will affect our
5 cross-examination on the material, if it is something
6 that the Board is not even being asked to pass judgment
7 on.

8 THE CHAIRMAN: I didn't think the Board
9 was necessarily asked to pass judgement on that. The
10 Board's comment was, if amendments are going forward at
11 this time, or proposed amendments, should we not be
12 taking account of what those proposed amendments are and
13 somehow tying them in with proposed conditions that we
14 might impose to make sure that they are not at odds
15 with each other, No. 1; or, in some cases where we feel
16 that a proposed amendment to the Act which may even
17 become, by the time this decision is issued, it may
18 already be in the Act having been proclaimed in law,
19 should be changed.

20 I mean, we are faced with two problems:
21 No. 1, if the Act is amended and changed prior to our
22 decision coming out, we are faced with existing
23 legislation on the books. We may, as a result of our
24 decision, propose that something be changed subsequent
25 to our decision, we may make a recommendation that we

1 don't feel based on the evidence we have heard that a
2 particular provision in the Act is appropriate and we
3 are suggesting it might be changed.

4 Alternatively, we may have to amend what
5 we might do vis-a-vis conditions of approval to tie in
6 with the legislation that is there.

7 And it gets difficult in these types of
8 situations because we are in a transition period, we
9 are in the middle of this application for which there
10 is going to be conditions imposed at some point,
11 presumably, and the Legislature on the other side of
12 the coin is in the process of looking at amendments to
13 one of the governing pieces of legislation in this
14 area, and somewhere somebody is going to be out of
15 sinc, I would suspect.

16 MR. CASSIDY: Mr. Chairman, my comments -
17 and I can appreciate your concern on that matter - my
18 comments are more in respect of the Ministry's terms
19 and conditions. As we know, as you understand, they
20 are draft terms and conditions and the Ministry has
21 already proposed some amendments to the Exhibit 700 I
22 have.

23 THE CHAIRMAN: Yes.

24 MR. CASSIDY: All I am simply interested
25 in is a very simple question: Is the Ministry

1 intending at any time between now and the end of this
2 case to suggest that the terms and conditions that they
3 propose be amended such that the Board is being asked
4 to approve these amendments in some fashion, because
5 that is obviously something that we would have to
6 address.

7 MS. MURPHY: And clearly, Mr. Chairman, I
8 think it is obviously clear that the jurisdiction to
9 amend this legislation belongs to the Legislature.

10 THE CHAIRMAN: Yes.

11 MS. MURPHY: And so we certainly wouldn't
12 be asking you to approve or order amendments to the
13 Crown Timber Act.

14 THE CHAIRMAN: No, and we are not
15 suggesting we have got that jurisdiction but we can
16 certainly I think comment in our decision that a
17 particular section of a particular Act does not seem to
18 address what we feel should be addressed and we can
19 suggest that the Legislature might consider--

20 MS. MURPHY: Yes, you could.

21 THE CHAIRMAN: --an appropriate
22 amendment.

23 MS. MURPHY: Yes, you could.

24 THE CHAIRMAN: We have done that in other
25 cases; I don't see why we couldn't do it here.

1 MS. MURPHY: Yes, you could. Let me just
2 clarify right now what the situation is, it's very
3 simple.

4 In the Class Environmental Assessment
5 Document we advised that the legislation that most
6 directly affects timber management in Ontario, the
7 Crown Timber Act, required some amendment and obviously
8 parties have said: Well, what do you have in mind?
9 And obviously we would expect, you know, this Board to
10 hear the submissions from people about various matters
11 that may ultimately have to be dealt with in the Crown
12 Timber Act.

13 Our difficulty, and what we have tried to
14 do, is take this through the proper steps so that we
15 can advise you what we are proposing, and people did
16 want to know and we thought it would be wise to advise
17 you.

18 THE CHAIRMAN: Ms. Seaborn?

19 MS. SEABORN: Mr. Chairman, if I can just
20 ask one question of clarification following from Mr.
21 Cassidy's question.

22 Is it MNR's intention, or was it MNR's
23 intention when they prepared the draft terms and
24 conditions to take into account proposed amendments to
25 the Crown Timber Act, or were those terms and

1 conditions written to conform with existing
2 legislation?

3 MS. MURPHY: I can't personally right now
4 think of anything in the draft terms and conditions
5 that conflicts with either; I can't at the current time
6 think of any draft term and condition of approval that
7 has any conflict with what you have heard or with the
8 current legislation at all.

9 MS. SEABORN: That is helpful.

10 THE CHAIRMAN: Are you contemplating that
11 because the Ministry has put forward its proposed
12 changes for the Crown Timber Act that other parties are
13 going to do likewise?

14 MS. MURPHY: Well, I don't know, Mr.
15 Chairman.

16 THE CHAIRMAN: Because they may not agree
17 with your proposed changes.

18 MS. MURPHY: They may not, of course,
19 they have other places to go to let people know and I
20 expect they will, because certainly once this
21 legislation goes to first reading there will be
22 committee and there will be people there who are very
23 interested in discussing this legislation.

24 THE CHAIRMAN: But is this going to be
25 something also canvassed by this Board?

1 MS. MURPHY: I do expect, Mr. Chairman,
2 that at some stage people may want to discuss this and
3 I don't know how they can if we don't have a position
4 on the record.

5 MR. MARTEL: We don't have a draft Bill.

6 MS. MURPHY: That's correct.

7 MR. LINDGREN: Mr. Chairman?

8 THE CHAIRMAN: Well, it all gets very
9 confusing, that's all we can say at this point, because
10 of the timing of everything, that's sort of a problem.

11 MS. MURPHY: Yes, the timing does make
12 things difficult, I agree. But people did want to know
13 what we had in mind and we thought it only fair to get
14 instructions that would allow us to do that.

15 MR. LINDGREN: For the record, I would
16 just like to indicate that because we don't have a
17 draft Bill before us, it is our intention to seek some
18 further clarification during cross-examination on the
19 proposed amendments. I can't indicate at this time
20 whether or not we will be introducing proposed
21 amendments, but we would certainly seek further
22 clarification on the evidence that Mr. Cary has just
23 presented.

24 MS. CRONK: Mr. Chairman, could I just as
25 a supplementary to what Mr. Cassidy said, and then for

1 our part we'll take it no further.

2 We fully support any effort by any party
3 at this hearing to provide information to the Board
4 members that may be of assistance to you in reaching
5 your decision. That is how Mr. Cassidy and I
6 understood the last 45 minutes to be intended.

7 If, however, it is intended by any party
8 to go beyond that and to urge upon you in final
9 arguments, for example, that a particular amendment or
10 someone else's proposed amendment to any piece of
11 legislation is or is not appropriate, is or is not
12 adequate, then we have a problem.

13 And so our point, as I understood Mr.
14 Cassidy was saying, is simply to have our understanding
15 confirmed that this was information only, at least as
16 far as the MNR is concerned, because clearly, sir,
17 whenever you begin proposing legislative amendments,
18 quite apart from the dilemma of the timing of new
19 legislation which presents a difficulty for the Board,
20 some of these are going to be controversial, some of
21 them are not going to receive unanimity among the
22 parties.

23 And I would have hoped, speaking
24 generally, that we would not be engaged at the end of
25 the day in an argument of the pros and cons of

1 suggested statutory amendments of any kind. That is
2 not to say, of course, that it isn't part of the
3 Board's function to comment as it considers appropriate
4 on warranted amendments. But if we get into that, we
5 are going to have to right now with this panel perhaps
6 revise cross-examination and all the rest of it.

7 THE CHAIRMAN: Well, I think -- just a
8 moment, Ms. Murphy.

9 I think, Ms. Cronk, that what you're
10 saying is probably in general the way the Board would
11 like to proceed. It doesn't want to get into detailed
12 proposed amendments.

13 Having said that however, some of the
14 things that might be proposed for the Act, for changes
15 to the legislation, might also be proposed in a very
16 similar nature for conditions of approval to be imposed
17 by this Board pursuant to this application, won't have
18 the force of a change to the Act, but it may well have
19 the force of dealing with a similar subject that might
20 be dealt with by the Act for the purposes of this Class
21 EA.

22 MS. CRONK: I understand, sir.

23 THE CHAIRMAN: And those are the ones
24 that you mentioned such as requirements for the Timber
25 Management Planning Manual to be mandatory and to apply

1 to all parties and things like that. It may also go
2 into the Act, but we may be very interested in making
3 sure it's a condition of approval pursuant to this
4 application. So there may be some duplication in that
5 sense.

6 MS. CRONK: I understand, sir.

7 THE CHAIRMAN: And I am not sure we can
8 keep all of the items that might be proposed for the
9 legislation mutually exclusive of the same subjects
10 being addressed as conditions of approval, or suggested
11 conditions of approval.

12 So I would just like to sort of put forth
13 that caveat.

14 MS. CRONK: Thank you, Mr. Chairman.

15 THE REPORTER: Could I have a moment.

16 THE CHAIRMAN: Yes.

17 ---Discussion off the record

18 THE CHAIRMAN: Would this be a convenient
19 time to break for lunch?

20 MS. MURPHY: Well, I guess that that
21 might not be a bad idea.

22 THE CHAIRMAN: No, the reason we're
23 saying that is that it may be that the court reporter
24 is not feeling well and--

25 MS. MURPHY: Yes.

1 THE CHAIRMAN: --perhaps it would be
2 better to have a break at this point.

3 MS. MURPHY: That's fine.

4 THE CHAIRMAN: 1:30.

5 MS. MURPHY: Thank you.

6 THE CHAIRMAN: Thank you.

7 ---Luncheon recess taken at 12:10 p.m.

8 ---On resuming at 1:35 p.m.

9 THE CHAIRMAN: Thank you. Be seated,
10 please.

11 Mr. Lindgren?

12 MR. LINDGREN: Mr. Chairman, I spoke with
13 Ms. Murphy a few moments ago. I would like to raise
14 with the Board an important procedural matter that has
15 recently arisen. I think it should be addressed at
16 this time.

17 MS. MURPHY: Not to interrupt my friend,
18 but this may take a few minutes. Could the panel stand
19 down while we continue with the procedural matters?

20 THE CHAIRMAN: Okay.

21 --- (witness panel withdraws)

22 THE CHAIRMAN: Is it something that has to
23 be addressed immediately though?

24 MR. LINDGREN: That's my submission, Mr.
25 Chairman.

1 THE CHAIRMAN: Okay. We will hear it.

2 MR. LINDGREN: The matter actually
3 commences with a letter that we received from Ms. Cronk
4 last Friday.

5 In essence, the letter takes exception to
6 certain comments that were allegedly made by Ms.
7 Swenarchuk to various media fairly recently. The
8 relevant portion of the letter reads as follows:

9 "We have had drawn to our attention
10 several articles printed in newspapers
11 and other publications in which certain
12 remarks attributed to you regarding our
13 clients and generally the conduct of
14 various parties at the hearing.
15 Certain of these comment attributed to
16 you are regarded by us as improper and
17 prejudicial to our clients. We intend to
18 raise this matter before the Board next
19 Wednesday, November 8th in Thunder Bay
20 and, as a courtesy, hereby inform you of
21 our intentions in this regard."

22 Now, subsequent to the receipt of that
23 letter, Mr. Chairman, we did telephone Ms. Cronk and we
24 also sent a letter to her dated November 6th, 1989.
25 Again, the relevant portion of this letter reads as

1 follows, and this is from Ms. Swenarchuk to Ms. Cronk:

2 "I request that you provide me at your
3 earliest convenience with full
4 particulars of the improprieties you
5 intend to allege as well as the remedy
6 you are requesting of the Board. In our
7 view the procedure in this matter is
8 subject to Section 23 of the Board's
9 Rules and necessitates your delivering
10 the appropriate written material."

11 This morning, Mr. Chairman, we had
12 delivered at our office a further letter from Ms.
13 Cronk. Ms. Cronk has attached copies of the articles
14 which contain the offending paragraphs; however, she
15 has declined to identify the offending paragraphs.

16 The letter goes on to indicate that:
17 "We have considered your suggestion that
18 this matter should be subject to a formal
19 motion pursuant to Rule 23 of the Board's
20 Rules. It is not our intention to
21 distribute a formal Notice of Motion to a
22 large number of parties in this matter
23 recognizing that such a motion will
24 allege impropriety on your part. We
25 would not have thought that this was your

1 wish. In any event; however, it is not
2 our review that we are required to
3 deliver a Notice of Motion pursuant to
4 Rule 23."

5 And then the letter goes on to indicate
6 the relief that Ms. Cronk is seeking.

7 "We intend, when this matter is raised
8 with the Board, to seek direction and
9 guidance regarding the form of conduct
10 which the Board expects from counsel in
11 communications in and with the media. It
12 is our view that certain of the comments
13 made by or attributed to you in the
14 articles set out above are critical of
15 the conduct of other counsel before the
16 Board, parties before the Board and
17 arguably of the Board itself."

18 And then skipping to the last paragraph:
19 "It is not our intention to ask the Board
20 for statutory relief as provided for
21 under the Statutory Powers Procedure
22 Act. We wish, however, to obtain a clear
23 indication from the Board as to the
24 standard of conduct expected by it of all
25 counsel throughout the course of this

1 hearing in their dealings with the
2 media. That indication, in our view,
3 will be of assistance to all counsel in
4 conducting themselves in the future."

5 Mr. Chairman, we regard this as a fairly
6 serious and substantial allegation against Ms.
7 Swenarchuk and, as well, in our submission, Mr.
8 Chairman, this is a matter that will at least
9 potentially affect all other parties.

10 In essence, Ms. Cronk is asking for
11 direction from the Board that may potential control or
12 constrain the conduct of counsel in their discussions
13 with the media. Clearly all parties should have notice
14 of this matter and they should be permitted to make
15 submissions on this issue.

16 In these circumstance and in the interest
17 of fairness, Mr. Chairman, we submit that the Board
18 should fix a date to hear this matter, perhaps in
19 Toronto; secondly, the Board should direct Ms. Cronk to
20 serve and file a Notice of Motion with supporting
21 material; and, thirdly, we are asking that the Board
22 direct Ms. Cronk to identify the specific passages in
23 the articles that she is objecting to.

24 In our view, we submit that it is
25 incumbent upon Ms. Cronk to file written material to

1 allow Ms. Swenarchuk and other parties to respond in a
2 meaningful fashion.

3 Those are my submissions, Mr. Chairman.

4 THE CHAIRMAN: Ms. Cronk?

5 MS. CRONK: Thank you, sir.

6 Mr. Chairman, as you and other Board
7 members will no doubt appreciate, there are three
8 letters involved that constitute the exchange of
9 correspondence between Ms. Swenarchuk and Fasken
10 Campbell, Godfrey. I would suggest, in light of the
11 fact that this has now been raised with you, that I
12 have copies of those letters made so that the Board can
13 review them in their entirety rather than the passages
14 that have just been quoted to you.

15 It will be apparent, in my submission,
16 when you review the letters, that an effort was made,
17 both as a matter of courtesy to Ms. Swenarchuk and
18 fairness, to ensure that she would be present before
19 the Board when a matter that our clients regard as most
20 serious was brought to your attention, and it was for
21 that reason that we wrote to her, first, without
22 involving other parties to determine whether she would
23 in fact be here and to let her know as soon as possible
24 the nature of the instructions we had received.

25 It was at her request that I agreed to

1 defer the matter from this week until next Tuesday
2 because she indicated that she would be in Thunder Bay
3 next Tuesday and was agreeable to the matter being
4 handled then.

5 I understand the suggestion now simply to
6 be an issue over whether a Notice of Motion is required
7 and a specific date should be fixed.

8 I am pleased to respond to those
9 suggestions, but I would prefer, sir, to do so once you
10 have the correspondence before you.

11 THE CHAIRMAN: Okay. But before we have
12 the correspondence before us, we want to canvass the
13 whole idea whether the Board should be getting itself
14 involved in specific allegations made by one party
15 against another party, both of those parties being
16 before the Board.

17 MS. CRONK: Let me --

18 THE CHAIRMAN: And the ramifications of
19 that should we in fact find that one party or the other
20 has acted in an improper way and what effect that
21 has on our future ability to deal fairly with all
22 parties before the Board.

23 I just want to say something just for a
24 moment, Ms. Cronk, in a general way; and, that is,
25 without getting into the issue of whether we should be

1 considering this at all and whether this is the
2 appropriate forum for something like this to be dealt
3 with, the Board would like to say that this is a
4 difficult proceeding in terms of how the parties and,
5 for that matter, the Board should be conducting itself
6 with the media per se.

7 It is different from other proceedings in
8 the sense that it is a lengthy proceeding and is
9 occupying and will occupy a space of time in excess
10 probably of two years. More importantly to the Board,
11 however, is the fact that the area of the undertaking
12 is so vast and that the parties before the Board are
13 potentially so numerous, and you must contrast that
14 position with the fact that the parties who are before
15 us on a daily full-time basis are relatively few in
16 number, and the Board has always approached this
17 particular hearing from the outset on the basis of
18 deciding that it was very much in the public interest
19 for as many people across the province as possible to
20 have as much information about the proceeding as they
21 can and, in this regard, we look upon the media as
22 being the only mechanism to really assist that.

23 We don't expect the vast number of people
24 who might be interested in parts of this application to
25 be following along on a daily basis with the

1 transcripts, notwithstanding we have provided them
2 across the province at some 35 repositories.

3 In order for people to keep up with what
4 is going on, and obviously not from the practical point
5 of view of being able to be present on a daily basis,
6 the media does provide a service of disseminating
7 information about the hearing.

8 It is for that reason that the Board, in
9 particular, has gone out of its way to grant media
10 interviews, so to speak, commenting where it can
11 primarily on procedural matters and matters of a very
12 generic nature without, of course - and it would be
13 improper to do so - commenting on the evidence or the
14 parties or anything like that.

15 But we feel it is important for the
16 parties who cannot be present and the public at large
17 to have some idea about what is happening throughout
18 the course of this very lengthy hearing.

19 Now, having said that, obviously the
20 media is going to be contacting parties to the
21 proceeding from time to time and asking them to
22 comment, and it is in this area that the parties have
23 to be somewhat circumspect in the way that they deal
24 with the media, bearing in mind that this is a
25 quasi-judicial hearing and bearing in mind that

1 disparaging remarks about other parties to the
2 proceedings can be taken to be a conduct of an
3 impropriety nature and can be dealt with.

4 I guess the Board's only concern, Ms.
5 Cronk, is whether or not bringing these matters before
6 the very tribunal that is sitting in judgment on the
7 evidence and ultimately the credibility of the parties
8 putting forward that evidence, is the appropriate forum
9 with which to deal with that kind of concern.

10 MS. CRONK: I understand the issue that
11 you are raising, Mr. Chairman. If I could respond to
12 that now.

13 THE CHAIRMAN: Okay.

14 MS. CRONK: And first, sir, if it need be
15 said, I am grateful for the elaboration that you have
16 given to me and other counsel just now as to the
17 perspective that the Board has generally on
18 communications of this nature.

19 THE CHAIRMAN: And I might just say that
20 it may be different in other cases as well, but we are
21 dealing with a particular application of a vast nature
22 covering a vast area--

23 MS. CRONK: I understand.

24 THE CHAIRMAN: --over a great length of
25 time and I think the Board's approach to the media is

1 perhaps a little more general and broader than it might
2 be in a more specific confined case.

3 MS. CRONK: Those very features of this
4 case, Mr. Chairman, have been well understood by
5 counsel representing the forestry industry and, indeed,
6 the necessity for that form of approach in the public
7 interest and to ensure that the very serious matters at
8 issue in this hearing are adequately and frequently
9 communicated to all those to be affected by it has been
10 understood as well.

11 I should make it quite clear, Mr.
12 Chairman --

13 THE CHAIRMAN: Excuse me one moment.

14 MS. CRONK: Yes, sir.

15 ---Discussion of the record

16 THE CHAIRMAN: Sorry.

17 MS. CRONK: Thank you, sir.

18 I should make a number of things quite
19 clear from the outset so that there is no
20 misunderstanding by the Board.

21 The matter that we have raised with Ms.
22 Swenarchuk does not involve in any way the issue of the
23 appropriateness of or necessity for communicating with
24 the press or dealing with the media; that is not the
25 issue.

1 The issue that has been raised with Ms.
2 Swenarchuk is the duty that attaches to legal counsel
3 as distinct from any party in the conduct of
4 communications with the press, and I make that
5 distinction quite deliberately, Mr. Chairman, as I hope
6 the Board will appreciate because there are very clear
7 duties that attach to lawyers in these situations as to
8 what degree of circumspection - if I could repeat the
9 word, Mr. Chairman - should be exercised when
10 discussing the matters that are pending before a
11 quasi-judicial tribunal.

12 The matters raised with Ms. Swenarchuk,
13 therefore, do not relate to anything that a party, as
14 distinct from a lawyer, has said to date or may say in
15 the future to members of the media, but rather relate
16 to things which a legal counsel has said, it will be
17 our submission, about other parties, about other
18 counsel and at least inferentially, if not more more
19 explicitly, about the Board.

20 We attempted to make it very clear to Ms.
21 Swenarchuk that the relief that we would be seeking
22 would be in the form of a direction, an indication from
23 the Board that would be of assistance to all counsel in
24 the future so that the rules are clear. And I put it
25 on that basis, sir; that is, the rules as to the type

1 of conduct, the type of prudence to be exercised by
2 legal counsel in communicating to and with the media.
3 I suggest, sir, that that is an essential issue that
4 the Board itself should deal with.

5 You have raised two matters with me.
6 First, whether this is the proper forum; and, secondly,
7 the general issue of communications with the media.

8 I should say that one of the articles
9 about which complaint is made and of which Ms.
10 Swenarchuk is aware is an article she herself wrote, it
11 is not an interview situation, it's an article that
12 appears under her own name and which was published and
13 which contains, in our submission, comments that are
14 both unfair to and prejudicial of our clients'
15 particular interest.

16 The difficulty, sir, is simply this:
17 That our clients regard the comments at issue and the
18 articles at issue as being most serious. They have
19 been made in a forum where traditionally legal counsel
20 do not litigate; that is, the media and the press. And
21 if that tradition and those rules are to be honored by
22 other counsel, we wish some guidance from the Board as
23 to what the standard is that is to apply.

24 As to whether this is the proper forum, I
25 recognize immediately, sir, the complexity and the

1 largeness of the issues before this Board. But I can
2 say to you, sir, with the greatest of respect, that
3 there have been other hearings, not totally dissimilar
4 to this one, that have lasted a very long time indeed,
5 19 months on one occasion that I'm thinking of, over
6 two years in another, where a very large number of
7 parties were involved where an issue or issues of this
8 kind arose.

9 It has always been, as I understand it,
10 the perspective of the courts that matters of this kind
11 are to be dealt with by the Board who is affected by it
12 and who has control of its own process and of the legal
13 counsel who appear before it. In my submission, there
14 is no forum but this that could be more appropriate for
15 this matter to be dealt with.

16 I should say as well, again, if it needs
17 any further emphasis, that it is direction and guidance
18 that we will be seeking. I say again, sir, that the
19 matter is regarded as most serious by our clients and
20 it was most clearly the direct result of instructions
21 from our clients that has led to this expression of
22 concern by us and I think to deal with the issue of
23 whether you wish a formal Notice of Motion, you should
24 see the correspondence, only part of which has been
25 quoted to you. I don't suggest that there is anything

1 the matter with that, but I think you should have the
2 benefit of reviewing it all.

3 I had understood that November 14th was
4 convenient to Ms. Swenarchuk. Our clients regard the
5 matter as an urgent one that requires your direction.
6 The Board may feel it better to deal with it at that
7 time or another and, by all means, I am open to that.

8 So I will reply to the submission dealing
9 with the requirement for a formal Notice of Motion and
10 supporting material, if I might, after you have had the
11 benefit of the correspondence.

12 I should add that I mentioned to Mr.
13 Lindgren that there is no reason in my view why this
14 can't be dealt with at the end of the day if that is
15 what the Board prefers, we do have a panel of witnesses
16 waiting. On the other hand, if you wish to deal with
17 it now, I will see that the copies are made now.

18 THE CHAIRMAN: No, I think we would
19 prefer to hear the evidence and get on with the
20 evidence as opposed to taking up that time. We can
21 deal with that at the end of the day.

22 Can this issue in your estimation, Ms.
23 Cronk, be dealt with by the Board in a generic fashion
24 without having to go into the details of the actual
25 alleged impropriety in terms of the article to which

1 you are referring; in other words, does the Board, in
2 order to set some guidelines for counsel and how they
3 should approach the media, do we have to have before us
4 what has already occurred in terms of the actual facts?
5 Do we need those facts in order to come forward with
6 appropriate guidelines.

7 And if such is not the case in your
8 estimation, then can we approach this issue on the
9 basis of submissions as to what should be the
10 appropriate way in which counsel should conduct
11 themselves with the media and seek the Board's
12 direction to counsel on those questions without going
13 into what has occurred?

14 MS. CRONK: I would like to consider
15 that, if I might, Mr. Chairman. I should say, however,
16 as a general submission to you on that point, that the
17 rules outside of this proceeding are indeed crystal.
18 They are set by the Law Society, there are rules of
19 professional conduct that speak to the inability of a
20 legal counsel to criticize in any way the tribunal
21 before which they appear, to criticize the conduct of
22 other counsel or to criticize the conduct of any party
23 before a proceeding in a forum where they don't have an
24 opportunity to fairly reply.

25 To that extent, the generic is dealt with

1 elsewhere, sir. But I will consider what I understand
2 the suggestion from you to have been.

3 THE CHAIRMAN: I mean, you can understand
4 our concern.

5 MS. CRONK: I do, sir.

6 THE CHAIRMAN: We have a certain limited
7 number of parties before us, they are integral parties
8 to the proceedings in the terms that they are taking an
9 active and full-time part. It involves two parties in
10 that category, your clients and Ms. Swenarchuk's
11 coalition of clients, and we would prefer if possible -
12 and I am not saying it is possible - to deal with the
13 whole matter of how counsel in the future should
14 conduct themselves with the media, if we can, without
15 having to get into the specifics of what might have
16 already occurred?

17 MS. CRONK: Right. May I then take that
18 under consideration. I will be required to seek
19 instructions on that, given the depth and strength of
20 the feeling on this issue from our clients.

21 I should alert the Board to the fact that
22 we have raised the matter but the articles at issue
23 affect more than simply our client and Ms. Swenarchuk;
24 it affects other legal counsel, is what I am saying to
25 you, sir.

1 THE CHAIRMAN: Okay. And one last thing,
2 as I think about this, I take it that the direction
3 that you are seeking from the Board, or the remedy, if
4 we might put it that way, that you might be seeking
5 from the Board are clear instructions to counsel as to
6 what would occur in the future.

7 Are you suggesting that there is some
8 other remedy that the Board could put forward to deal
9 with past conduct?

10 MS. CRONK: Sir, there are a number of
11 remedies, statutory, that are available to the Board
12 now. What we made clear in our letter to Ms.
13 Swenarchuk was that we would not be seeking in a formal
14 way or an informal way, relief of a statutory nature.
15 What we do wish --

16 THE CHAIRMAN: And these remedies are
17 under which piece of legislation?

18 THE CRONK: The Statutory Powers
19 Procedure Act.

20 THE CHAIRMAN: The Statutory Powers
21 Procedure Act?

22 MS. CRONK: Yes, sir. There are remedies
23 outside of that Act in a formal legal way as well.

24 What we simply are asking from the Board
25 is an indication, a direction as to whether the type of

1 conduct of which we are concerned is appropriate and
2 prudent or not.

3 If it is, then that is a statement to
4 other counsel as to what is appropriate in the context
5 of a proceeding of this kind; if it is not, it is a
6 statement to the contrary, that that kind of conduct is
7 not appropriate.

8 Clearly, sir, what I am saying is that,
9 in our submission, any comment made by any legal
10 counsel in this hearing that is critical of any other
11 legal counsel, that is critical directly or indirectly
12 of this Board, that is critical of any party to these
13 proceedings when made in the press or the media, which
14 is a forum to which the affected parties cannot
15 respond, is imprudent and should not be accepted as an
16 acceptable form of conduct by the Board.

17 That is what we are saying and it is that
18 form of direction that we would seek.

19 THE CHAIRMAN: Very well.

20 Ms. Seaborn?

21 MS. SEABORN: Thank you, Mr. Chairman.
22 Just one comment arising out of this matter.

23 I think, Mr. Chairman, your comments were
24 very helpful in outlining how the Board sees the press
25 being involved in these proceedings.

1 One thing that my client is concerned
2 about is any escalation of an issue such as this to
3 such a proportion that there may be a negative effect
4 on the negotiations that are scheduled for February
5 pursuant to the Board's order.

6 My client is concerned with getting on
7 with this hearing and moving the matter along and
8 having parties going into the negotiations in a frame
9 of mind such that compromises can be met, and we would
10 not like to see that process derailed in any way as a
11 result of a peripheral matter.

12 THE CHAIRMAN: Well, I certainly don't
13 think any of the parties, including the Board, want to
14 see that in any way, Ms. Seaborn. By the same token,
15 if there is conduct that is occurring that is
16 inappropriate in terms of how counsel should conduct
17 themselves for any party, and there is clearly at least
18 allegations of that, they may have to be dealt with so
19 that it won't reoccur in the future.

20 And that, I take it, Ms. Cronk, is partly
21 your concern, that it won't reoccur in the future if it
22 is deemed to be inappropriate.

23 MS. CRONK: Quite so, sir.

24 THE CHAIRMAN: Mr. Edwards?

25 MR. EDWARDS: Mr. Chairman, I come a bit

1 late to this discussion. I was aware that it might be
2 taking place, however, and I had occasion to review the
3 articles that are complained of.

4 I'm very concerned, Mr. Chairman, that if
5 relief is being sought in the form of, in effect, a
6 reprimand, that some type of proper notice ought to be
7 given because it can in fact impact -- any ruling could
8 impact on all counsel. Surely it ought to at least be
9 by way of notice to all parties represented by counsel.

10 If Ms. Cronk and Mr. Cassidy - I am sure
11 they are - are raising this very seriously and are
12 looking for some result, and if there is a result being
13 sought which could impact on counsel, I think it is
14 only fair to all counsel, including the ones that
15 aren't here today, to be given notice of that, I think
16 at the very least. Whether it's by way of formal
17 motion or not, there ought to be some documentation
18 which sets out with particularity the nature of the
19 complaint, how the client is prejudiced, and the relief
20 sought and against whom.

21 In effect, Mr. Chairman, one wonders even
22 today if one of us walks out in the hallway and the
23 ever-present person from the media put a microphone
24 under our nose and asked for our comments on what's
25 taken place, obviously one wonders whether there is a

1 line which is being changed as a result of this process
2 or a line which could be changed, and I think it's a
3 very serious matter and I am quite confident that my
4 friends have raised it because they are concerned, but
5 I think because of the nature of the concern, it has to
6 be done properly and that involves notice to those
7 people and counsel and those parties who may be
8 affected by it.

9 And, as I understand, Mr. Lindgren has
10 made a submission to you in support of that position.
11 I would second that position on behalf of my client.

12 MS. CRONK: I understand you to have made
13 a suggestion, sir, at least an inquiry as to whether
14 this could be dealt with generically without the
15 specific materials before you.

16 If you wish, I would like to consider
17 that, seek instructions on it and give you our position
18 on it. I thought I had made it very clear to my friend
19 already, and no doubt his remarks were intended to
20 recognize that, that this is considered a very serious
21 matter by our clients and that explains the manner and
22 the careful way, frankly, in which it was raised with
23 Ms. Swenarchuk at all.

24 Having said that, sir, I wonder if the
25 correspondence should be placed before you while there

1 remains any possibility of dealing with it generically.
2 I would that to keep the factual context away from the
3 Board if we're going to deal with it generically, it's
4 preferable, and perhaps I could respond to you at the
5 end of the day. During the break I'll try to deal with
6 it.

7 THE CHAIRMAN: I think that would be
8 preferable, to see if there is another way to handle it
9 other than going, so-called, the formal route with a
10 formal Notice of Motion, supplementary documentation
11 supporting that motion, giving proper notice to all
12 potentially affected parties or counsel and then
13 setting a date.

14 If there is an alternative to dealing
15 with it in that fashion, particularly on putting the
16 facts of the alleged impropriety in front of the Board
17 specifically, then we would like to hear your
18 suggestions on that.

19 MS. CRONK: That's fine, sir.

20 THE CHAIRMAN: So that we won't respond
21 at this time as to the process until we have heard
22 further from you. And when do you suggest, at the end
23 of the day or tomorrow?

24 MS. CRONK: I will try, sir, to obtain
25 instructions this afternoon. If I am unable to do so,

1 I will let you know, but I will certainly try this
2 afternoon.

3 I do wish to say on behalf both of our
4 law firm and our clients to indicate that in our
5 submission the rules of this Board contemplate that no
6 formal notice need have been given with respect to the
7 matter and that, for the other reasons I have alluded
8 to, is why it was approached in this way.

9 Having said that --

10 THE CHAIRMAN: Well, I think the rules
11 contemplate, at least for the parties before the Board,
12 that things can be raised --

13 MS. CRONK: Exactly, sir.

14 THE CHAIRMAN: --at the proceeding
15 itself. Having said that, we do recognize that there
16 are several parties which are potentially affected that
17 are not before the Board on an ongoing basis.

18 MS. CRONK: Exactly, sir.

19 THE CHAIRMAN: So that we may go further
20 and still request or require that proper notice be
21 given to all parties on the full-time correspondence
22 list, for example.

23 MS. CRONK: And if the Board considers
24 that appropriate, we have no hesitation whatsoever in
25 doing so.

1 THE CHAIRMAN: Okay.

2 MS. CRONK: Thank you.

3 THE CHAIRMAN: Why don't we leave it for
4 now and move on to the evidence.

5 Ms. Murphy?

6 ---(witness panel resumes)

7 MS. MURPHY: Mr. Chairman, in light of
8 recent occurrences, I think I will leave aside further
9 discussion of the Crown Timber Act until perhaps some
10 later point which I expect will give us opportunity to
11 discuss those matters again and go on to the next part
12 of the evidence in which Mr. Cary will be discussing
13 area inspections.

14 MR. CARY: As I mentioned earlier when I
15 talked about the inspection of field activities, I
16 would be returning to this topic. Now, the inspection
17 of field activities section in the evidence gave rise
18 to a number of interrogatories that related to the
19 nature, frequency and timing of area inspections. As
20 the evidence and the answers we gave explained, a
21 number of the factors --

22 THE CHAIRMAN: Are you on a particular
23 page of an exhibit at the moment?

24 MR. CARY: No, I am not.

25 THE CHAIRMAN: Okay. I just wanted to

1 make sure I was with you, Mr. Cary.

2 MR. CARY: Thank you, Mr. Chairman.

3 A number of factors affected the nature,
4 frequency and timing of area inspections, but before I
5 start to discuss those in detail, I would like to
6 define for you the term area inspection which is new
7 and also another term I will be using; and, that is,
8 technical surveys or technical inspections. Now, this
9 latter term, technical surveys or inspections, we have
10 used just for the convenience of this discussion and we
11 will use it to help differentiate those sorts of
12 surveys from the area inspections.

13 An area inspection will be an examination
14 of timber management activities intended to register
15 and record whether compliance with plans or standards
16 or legislation has been met. The completed area
17 inspection reports are filed at the district office and
18 are available to the public, and these area inspections
19 will be conducted both on normal operating areas and on
20 areas of concern.

21 The term technical surveys and
22 inspections include field inspections to administer
23 contracts, to supervise projects and will entail, for
24 example, tree planting quality assessments, site
25 preparation quality checks, survival counts, stocking

1 surveys, free to grow surveys and also pre-cut
2 inspections or post-cut inspections.

3 During these surveys very often detailed
4 information is gathered. These technical surveys will
5 usually, therefore, more than satisfy the need for an
6 area inspection and will, therefore, provide the
7 information with which you can complete an area
8 inspection report. My point is here that a separate
9 trip to conduct an area inspection may not always be
10 required.

11 There have been some questions about the
12 relationship of area inspections to the silvicultural
13 information system and also whether area inspections
14 are to be aggregated.

15 MS. MURPHY: Q. Just to clarify one
16 thing, Mr. Cary. You were earlier giving a definition
17 of area inspections and you commented that the
18 completed reports are filed at the district office and
19 that they are available to the public. These specific
20 documents that you were referring to have not yet come
21 into use; is that correct?

22 MR. CARY: A. The area inspection
23 process is new and it will not come into effect until
24 April the 1st, 1990.

25 Q. Thank you.

1 A. Now, to answer those two questions
2 that have been posed, I would like to go over a chart
3 that we have produced. It is called: How Field
4 Inspection Information is Used. I have told you about
5 the nature of technical surveys and inspections and
6 also area inspections. The technical surveys/
7 inspections will collect information that may result in
8 a silvicultural planning change or in silvicultural
9 planning per se.

10 Q. If I can just ask you to stop for one
11 minute.

12 MS. MURPHY: The diagram that Mr. Cary is
13 referring to is in Exhibit 932 and it is page 4 of that
14 exhibit, I believe.

15 MR. CARY: Yes. I am sorry, Mr.
16 Chairman.

17 That information may be used, as I said,
18 to plan silviculture. Some of that information may be
19 fed into the silvicultural information system that Dr.
20 Osborn will be telling you about later.

21 The area inspection reports both for
22 normal operations and for areas of concern, as I have
23 said, will be recorded and retained at the district
24 office and are available for the public to see. They
25 will be stored there because follow-up action could be

1 required.

2 Those area inspection reports of areas of
3 concern - and I will be going into more detail about
4 this a little later - are used to complete the report
5 of past forest operations which is a requirement of the
6 timber management planning process. So they are used
7 to complete a portion of the report of past forest
8 operations dealing with compliance with the areas of
9 concern prescriptions.

10 The only relationship between area
11 inspections and technical surveys or inspections is, as
12 I have said, when during a technical survey or
13 inspection enough information is collected to complete
14 an area inspection report, but there is no direct
15 relationship. But if you are out there collecting
16 information, walking that cut-over, you may indeed fill
17 out an area inspection report.

18 The second question is whether area
19 inspection reports are to be aggregated. And the
20 answer to that is no, they are going to be stored at
21 the district and used at the district, but it is not
22 intended that they be aggregated because they are not
23 really suited for this purpose. And I think when I
24 explain a bit more about it you will realize why. They
25 contain data such as observations that are simply not

1 quantifiable or aggregatable. As I said, they are
2 filed and used to complete other reports.

3 Now, with the assistance of two other
4 diagrams, the first of which is page 6 of Exhibit 932,
5 I will explain how these two sorts of inspections are
6 integrated to provide an opportunity to monitor
7 compliance both in areas of concern and in normal
8 operating areas. And I think this will give you an
9 understanding of the nature, frequency and timing of
10 the inspection workload across, in the first chart, an
11 entire management unit and then, in more detail in the
12 second chart that I am going to show you, on a typical
13 harvest block. So I am going to first look at the
14 management unit and then at one particular piece of the
15 management unit and talk about the inspection workload.

16 Now, this particular diagram illustrates
17 a reasonable although stylized view of the management
18 unit workload for one year.

19 And I would just like to explain what the
20 symbols mean. The dot there indicated by the pointer
21 are areas of concern, and you will see them scattered
22 around the management unit; the access, whether it is
23 primary or secondary, we have four roads that are going
24 to be built during this particular year; the harvest
25 blocks are indicated by the pink blocks, and there are

1 five of those; the renewal blocks are green, and the
2 area in which we are going to conduct maintenance
3 operations is indicated by the yellow blocks. The
4 areas that are indicated with an S are those areas that
5 we are going to conduct some sort of assessment survey
6 on, whether it be free to grow, whether it be stocking,
7 whether it be survival.

8 So that gives you an idea of the workload
9 for a typical management unit for one year, and I would
10 like to give you some idea of what that workload is.

11 Areas of concern could number on a
12 management unit in one year between 10 areas of concern
13 or 200 areas of concern per year. That's the sort of
14 range, depending on the nature of the management unit,
15 depending on where the operations are located for that
16 particular year.

17 Construction of access roads might range
18 from 10 kilometres to 100 kilometres; harvest, you can
19 be looking at 1,000 hectares or 6,000 hectares; renewal
20 operations, whether it be site preparation or planting
21 or seeding, it could be 1,000 hectares or 8,000
22 hectares; maintenance, whether it be on the ground or
23 from the air, again 1,000 hectares to 10,000 hectares.

24 You could have a huge range of assessment
25 surveys. There could be hundreds on some management

1 unit or tens of thousands on another management unit in
2 one year.

3 MS. MURPHY: Q. Tens of thousands of
4 hectares?

5 MR. CARY: A. Hectares, sorry. Tens of
6 thousands of hectares. So that is the sort of
7 inspection workload the unit forester faces and, as you
8 can see, its geography is pretty large. The workload
9 includes current timber management activities, it looks
10 at inspecting the results of past timber management
11 activities, and it may provide information for future
12 use.

13 Now, I would like to show you another
14 diagram which is page 7 of Exhibit 932 labeled:
15 Harvest Block Inspection Workload. Now, we are down to
16 a small area, we will call it a harvest block.

17 As you see, the time frame that we are
18 going to be conducting inspections during is a ten-year
19 period in this particular case, not a one-year period.
20 So although we have called it harvest block, it
21 encompasses a lot more than just the harvest
22 activities, or the inspections cover a lot more than
23 the harvest activity.

24 Again, this is illustrative. I would
25 like to lead you through it. This area, and I checked

1 with Dr. Euler because we are going to clearcut it, is
2 120 hectares in size. It will be accessed by a
3 secondary road and that comes in from the south, so
4 this is the access road into the block (indicating) and
5 it lays -- the block lies just south of a lake that has
6 a tourism value on it and just east of a trout stream.

7 You will see that this block is going to
8 receive many more types of inspections than just area
9 inspections, it will be inspected for technical reasons
10 as well. And I should like to point out that before
11 that first area inspection is carried out there have
12 been -- that block has been visited, that centre line
13 of the road is already in there, the reserve is already
14 flagged, somebody has had a look at it, somebody has
15 been in there, this is not the first time that that
16 particular area will be inspected.

17 THE CHAIRMAN: How do you determine, Mr.
18 Cary, what area you will want to conduct your area
19 inspection on; like, who determines that you are going
20 to look, for the purposes of a particular area, at a
21 harvest block as opposed to a management unit as
22 opposed to some other geographical area?

23 Is it laid out anywhere that there shall
24 be area inspections, for instance, on all harvest
25 blocks at some point in time at regular intervals or

1 there shall be an area inspection of at least a
2 district or a region, et cetera, in a specified time
3 frame?

4 MR. CARY: We are going to conduct area
5 inspections on Crown lands across all management units,
6 and I am talking about one particular management unit
7 and I will be telling you more about the nature,
8 frequency and timing that, for example, has to be
9 formally written down for areas of concern.

10 So it is going to be Ministry policy and
11 there will be procedures that speak to exactly that and
12 and it will mandatory to carry out area inspections on
13 all management units, on all harvest blocks, on all
14 maintenance blocks, on all renewal blocks, on all
15 roads.

16 THE CHAIRMAN: And, again, just going
17 back to the original question, this will be decided
18 through a directive of head office--

19 MR. CARY: Yes.

20 THE CHAIRMAN: --in terms of a policy
21 directive; is that correct?

22 MR. CARY: Yes, that's correct. On a
23 management unit for areas of concern, the planning team
24 will decide exactly when and how areas of concern will
25 be inspected; on normal operating areas, the unit

1 forester will be involved in that consideration, but
2 there will be a policy and a term and condition that
3 speaks to that.

4 THE CHAIRMAN: And there isn't such a
5 policy at the moment?

6 MR. CARY: No, there is no -- yes, that's
7 correct.

8 THE CHAIRMAN: Okay.

9 MS. MURPHY: Q. And you will be speaking
10 to that policy in a little more detail in a few
11 minutes?

12 MR. CARY: A. Yes. So with the aid of
13 this pointer, I would like to just lead you through the
14 sequence of inspections that we will be undertaking.

15 I will be talking later about
16 specifically how you determine how many and when the
17 area inspection of this particular water crossing may
18 occur, but for the purposes of this discussion there
19 will be an area inspection of that water crossing and
20 that probably will be the first one that you conduct as
21 the road construction progresses into the block.

22 As the harvest operations commence and
23 the road construction proceeds, we will be conducting
24 another area inspection, when the road comes to
25 possibly this area, and you will be conducting a cut

1 inspection, because now the harvest has proceeded into
2 the block. So to date you have got two area
3 inspections on the access route and a cut inspection
4 that you have carried out and the information -- and
5 that information will be used to complete an inspection
6 down here indicated by the numeral 3, an area
7 inspection of harvest.

8 As the cut progresses, you will conduct
9 an area inspection of that reserve that's been set as a
10 product of the area of concern planning process and
11 that reserve protects the tourism values of that lake.
12 An area inspection will be conducted to ensure that
13 that boundary has been complied with.

14 Another area inspection indicated by the
15 letter 4 will be conducted along that trout stream to
16 ensure, again, that that particular boundary that was
17 set in the timber management plan is complied with.

18 The fifth -- sorry, I am on to the sixth
19 now. The letters SAP stand for supplementary aerial
20 photography and aerial photography may be used when the
21 cut-over is completed to complete an area inspection
22 report and that area inspection report will not only --
23 or that photography will not only confirm the
24 boundaries of the cut, but also the boundaries of the
25 reserve.

1 After the cut, the unit forester may wish
2 to conduct the first technical inspection which would
3 be a post-cut inspection done to refine or confirm the
4 renewal prescriptions in that area. So we are up to 7
5 here.

6 The renewal operations start, and if
7 there is site preparation prescribed for this harvest
8 block, there will be usually two inspections. The
9 first one will be to administer that contract, that
10 site preparation is being conducted under a contract.
11 So you will be there on a regular basis to ensure that
12 the specifications for that site preparation contract
13 have been met and we will term that a technical
14 inspection, and that's indicated by the numeral 8.

15 An area inspection of the site
16 preparation of that block will then be conducted and
17 the information to complete that area inspection report
18 will probably come from the survey, the technical
19 inspection that you have been -- that has been going on
20 during the site preparation of that block.

21 The same thing would happen for a
22 renewal, whether you are planting this block or seeding
23 it, there would be technical inspections to make sure
24 that the quality of the planting or the seeding meets
25 the specifications, and then an area inspection would

1 be conducted for compliance purposes.

2 Maintenance, and here we are looking at
3 inspections No. 12 and 13. Should there be maintenance
4 activity conducted after -- long after, sometimes many
5 years after planting or seeding there will be technical
6 inspections to make sure that the prescription was
7 adhered to and then a subsequent area inspection
8 completed.

9 Technical inspections No. 14, 15 and 16;
10 14 dealing with survival. Should that area be planted,
11 survival will be assessed through a technical
12 inspection. Stocking surveys may be taken, free to
13 grow assessments may be taken.

14 So when you look at this area, 16 surveys
15 have been done -- 16 inspections have been done, I am
16 sorry, some of which are area inspections and some of
17 which are technical inspections or surveys. There
18 could be more area inspections or less area inspections
19 on a typical block; there could be more technical
20 inspections or less technical inspections on this
21 particular block.

22 Now, I want you to keep in mind that
23 that's 120 hectares. So given the size of the area
24 that is being treated on a management unit, given the
25 relative risk -- relative amounts of risks involved in

1 different activities - and by that I mean access,
2 harvest, renewal or maintenance - and the very real
3 practical limitations of staff, time and dollars you
4 have to either, as a district manager or as a unit
5 forester, prioritize the efforts you expend.

6 So bearing that in mind, I would like to
7 show you a set of considerations that will influence
8 the prioritization of effort and, thus, determine the
9 nature, frequency and timing of area inspections.

10 MS. MURPHY: Q. May I just ask you two
11 points of clarification before you do that. You've
12 talked about this number of views of this area, is it
13 necessary to make a separate visit for each one of
14 those 16 different views that you have on that chart?

15 MR. CARY: A. No, it isn't. As I said,
16 you may collect information during a technical survey
17 that will allow you to complete an area inspection
18 report. So you may not be making 16 trips, you may be
19 making less than 16 trips.

20 MR. MARTEL: Why not combine them then?

21 MR. CARY: Exactly. You may make eight
22 trips --

23 MR. MARTEL: No, but all along the line,
24 rather than attempt to put it in two different
25 categories, why don't you just combine the effort?

1 MS. MURPHY: Q. A follow-up actually to
2 Mr. Martel's question. Is the area inspection report
3 that you are discussing then a simplified reporting of
4 the detailed information that would have been -- in
5 some of those cases, it would have been collected in
6 the technical survey?

7 MR. CARY: A. Yes. We have kept the
8 area inspection report itself to be very basic and very
9 simple to fill out, and you may well be able to fill
10 out the area inspection report back at the office on
11 the basis of information that you have collected out in
12 the field. So it's simple, it's a simple level of
13 information, it is not complicated, it registers
14 compliance.

15 These considerations that I want to go on
16 to tell you about will be used by the planning team
17 when developing the formal compliance monitoring
18 program for AOCs and by the unit forester when the
19 same -- when he or she considers the inspections of
20 normal operating areas.

21 This overhead: Determining the Nature,
22 Timing and Frequency of Area Inspections is page 6 of
23 Exhibit 932.

24 THE CHAIRMAN: We have got it as page 8,
25 is that the same one?

1 MR. CARY: I'm sorry, it is page 8, Mr.
2 Chairman.

3 So be it the planning team or be it the
4 unit forester, the first question one would look at is:
5 What type of activity is planned, and where that
6 activity is, that will be the second question: Is it
7 in an area of concern or is it on a normal operating
8 area. And, remember, if it is an area of concern, the
9 decisions will be formalized in the timber management
10 plan.

11 Also, one must consider: What are the
12 implications of non-compliance; i.e., what is the risk,
13 what are the consequences? The next factor that you
14 would consider is: What is the intent of the
15 inspection, should it be preventive; i.e., should there
16 be an inspection before operations commence? How is
17 the inspection to be conducted, what method that you
18 use would best detect problems? And are there
19 acceptable options: Could you do it from the air or
20 the ground?

21 The next question that you would consider
22 would be when and how often should the area be
23 inspected: When can you best detect problems, that
24 might be very critical; and, lastly: Who can best
25 carry it out.

1 So by going through that set of questions
2 and, therefore, assessing risk one could set priorities
3 for your efforts. As I said, in the one hand the
4 results of those considerations for areas of concern
5 will be set out in the TMP and, on the other hand, they
6 will be considered annually by the unit forester.

7 Now, as you can imagine, every situation
8 is different; the risks are different, the consequences
9 and the non-compliance vary. There simply is no
10 standard formula or answer for the nature, frequency
11 and timing of inspections.

12 And let me give you two examples. The
13 first is where staff are on hand on a regular basis
14 during, for example, an MNR tree plant or are required
15 to certify that work is being done to a certain
16 standard, it will be generally unnecessary to complete
17 more than one area inspection report, and that would be
18 at the end of the project. You have been there through
19 the project, so an area inspection report would be very
20 detailed, would be very limited in detail and the
21 intent of that particular area inspection report would
22 be to register that an inspection had been made in
23 essence.

24 On the other hand, for a stream crossing
25 near a spawning bed, and we have a diagramatic example

1 on the previous chart of a diagram of a harvest block,
2 that water crossing, should it be near a spawning bed,
3 it may be necessary to do site inspections before the
4 start to make sure that the location that's been
5 flagged is in exactly the right spot, it could be
6 necessary during the early stages of construction when
7 the likelihood of problems is the greatest, and at that
8 stage you could conduct -- rather, you could carry out
9 remedial action or perhaps refine the prescription.

10 THE CHAIRMAN: Mr. Cary, would not in
11 that last example all of that be encompassed within
12 compliance of the water crossing guidelines?

13 In other words, before you can construct
14 a bridge, before you can do a water crossing, you have
15 to go there, you have to inspect the site, you have to
16 figure out where you are going to do it, you have to
17 look at what the impacts are going to be, and then you
18 have to plan your construction in accordance with
19 guidelines?

20 MR. CARY: Yes.

21 THE CHAIRMAN: So you are doing all of
22 that before you can build anyways.

23 MR. CARY: Yes.

24 THE CHAIRMAN: Do you just end up with an
25 extra piece of paper that says all of that also

1 constitutes an area inspection?

2 MR. CARY: You end up with a piece of
3 paper with limited detail that says that those
4 prescriptions in that location has been complied with.
5 That's what you end up with.

6 MS. MURPHY: I think you will recall -- I
7 am sorry. I think you will recall from earlier
8 evidence that the guideline you are referring to, the
9 one that deals with water crossings, has portions of it
10 that would contribute to the results in the timber
11 management plan and, of course, that would be seen in
12 the plan.

13 Q. But are there not portions of that
14 document, Mr. Gordon, that would also guide the actual
15 construction operation itself?

16 MR. GORDON: A. Yes, that's correct.
17 You can only go so far in the timber management plan in
18 coming up with detailed prescriptions for water
19 crossings, and when you do get closer to the water
20 crossing, the year that you are going to be
21 constructing it, you may actually identify some
22 specific technical details relative to that water
23 crossing and they may be part of your application for
24 approval to build that water crossing.

25 And then upon approval to build that

1 water crossing and with appropriate conditions in hand,
2 the company would then proceed to build a water
3 crossing and at that point in time you would carry out
4 an area inspection to confirm that they were complying
5 with the conditions of that approval and you would note
6 the results of that area inspection on an area
7 inspection report.

8 THE CHAIRMAN: Okay. And I guess my
9 question goes back, Mr. Cary, to the fact that - you
10 were using the water crossing as an example - that
11 before you built you might want to go out and do an
12 area inspection.

13 MR. CARY: Just to confirm the location,
14 to make sure there has been no mistake on that line
15 that we flag --

16 THE CHAIRMAN: Well, I am suggesting that
17 you couldn't build in any event under the guidelines
18 unless you determined the proper location, and I would
19 have thought that an area inspection as a compliance
20 check would have been after you have built to ensure
21 that you met the conditions of the guidelines.

22 But isn't the area report an after the
23 fact as opposed to a prior to building because prior to
24 building is covered by another set of guidelines.
25 Presumably you can't get the approval to build unless

1 you do the very thing that you are doing in the area
2 inspection. I don't know, maybe I have got it mixed
3 up, but...

4 MR. CARY: Dave, would you...

5 MR. GORDON: Okay. First of all, in some
6 cases you are giving approval of a water crossing for a
7 very specific location, okay, and what you are doing is
8 making the assumption that when the company flags that
9 line up to the water crossing that they end up in the
10 spot that they have got approval to build a water
11 crossing.

12 What Mr. Cary is saying is sometimes the
13 location at that water crossing is so critical that in
14 some cases we may check to see if they are in the right
15 location before they start actually doing something in
16 the water.

17 THE CHAIRMAN: Okay. And I just would
18 add, you wouldn't have done that before you have given
19 them the approval to build, you wouldn't have insisted
20 that the location is exactly marked before you can
21 actually build? I would have thought it would be --

22 MR. GORDON: Not necessarily, no.

23 THE CHAIRMAN: Okay.

24 MR. GORDON: Like, you may give approval
25 on March 31st and the water crossing is going to be

1 built on September 15th, and so therefore they may not
2 have marked that exact spot.

3 You and the company may have visited that
4 spot, but you may not -- but you want to confirm that
5 as the road comes up it actually ended up in the right
6 place. Like, there just could be a mistake out there,
7 and I would say that that happens very rarely, but
8 because you are so worried about the sensitive value
9 downstream you do want to make a check in this critical
10 situation.

11 MS. MURPHY: Q. And in that situation
12 where someone has come to you in March asking for
13 approval for a location, is the road -- the potential
14 road location marked on a map at that stage rather than
15 on the ground?

16 MR. GORDON: A. It could be either.
17 Sometimes it may be already there, so that makes things
18 a lot simpler, and sometimes the road may be only
19 constructed two miles farther south. So, therefore, it
20 becomes that critical to --

21 THE CHAIRMAN: Your corridors would be
22 there though; wouldn't they?

23 MR. CARY: Oh yes, and they would be
24 marked on a map.

25 MS. MURPHY: Q. But marked on a map as

1 distinct from on the ground?

2 MR. CARY: A. Yes.

3 Q. So this is one kind of situation
4 where you may determine that an inspection is required
5 prior to the next step -- prior to any steps in
6 construction. Is that the example you are giving?

7 A. That's correct. You might want to
8 conduct an inspection at the end of the construction of
9 that water crossing as well, again, to make sure that
10 the total structure, the total crossing is in
11 conformance with the plans.

12 THE CHAIRMAN: When you say 'you might
13 want to', wouldn't you want to in all cases?

14 MR. CARY: This would depend on the risk.
15 And in this particular instance, yes, you would do it
16 because of the sensitive area immediately downstream.

17 THE CHAIRMAN: Well, you haven't got your
18 area of concern section where you deal with area
19 reporting.

20 MR. CARY: This would be an area of
21 concern.

22 THE CHAIRMAN: That's right. And what I
23 was going to say is, if you have an area of concern,
24 would you not want to do compliance monitoring in all
25 cases?

1 MR. CARY: Yes, yes.

2 THE CHAIRMAN: As opposed to a normal
3 operating area where, depending on the risk, you may
4 decide that you don't have to go back because the risk
5 is relatively low?

6 MR. CARY: That's exactly right, Mr.
7 Chairman.

8 THE CHAIRMAN: Okay.

9 MR. CARY: And just to finish this saga,
10 you might come back at peak stream flows to have a look
11 at that whole area.

12 So I have given you two examples: One on
13 one extreme and the other on the other extreme. So
14 these are the sorts of examples the planning team has
15 to consider in, as I have said, developing the
16 compliance monitoring program for areas of concern in
17 the timber management plan.

18 I would like to stress that in addition
19 to area inspections of AOCs or areas of concern which
20 are planned five years in advance, the annual area
21 inspection workload in normal operating areas, together
22 with the ongoing technical surveys, has to be
23 considered and prioritized by the unit forester. The
24 greater the requirement for inspection and reporting,
25 the less time the unit staff will have for ensuring

1 that a quality silvicultural program happens out there.

2 Before I spend a little time on the
3 development of the compliance monitoring program for
4 areas of concern, I would like to point out four
5 things. As I said, we have been inspecting things in
6 the field for years; however, we feel that it could
7 have been documented better and what we now require is
8 a uniform, consistent system that is reported, and so
9 it is for these reasons we will change the reporting of
10 field inspections.

11 This new area inspection process is
12 currently under development, it is not yet field
13 tested, a policy will be in place by the end of this
14 year, and there are no detailed written procedures yet.
15 The area inspection program will be implemented on
16 April the 1st, 1990.

17 The basic area inspection form that's
18 found on page 59 of the evidence of this panel will be
19 used both in areas of concern and on normal operating
20 areas and it is for this reason that it is intended to
21 be simple and it also can be used for all activities.

22 MS. MURPHY: Q. And, as I understand it,
23 the area inspection concept is discussed in the draft
24 terms and conditions of approval at condition No. 49;
25 is that correct?

1 MR. CARY: A. Yes, that's correct.

2 Q. Thank you.

3 A. And lastly, the area inspector during
4 the inspection may make observations which are
5 noteworthy and record them.

6 THE CHAIRMAN: Okay. Mr. Cary, I think
7 we would like to take a short break at this point.

8 We are down to one reporter this
9 afternoon and we would like to take some more frequent
10 breaks than would be normal. So I think we will break
11 for 15 minutes.

12 Thank you.

13 ---Recess taken at 2:45 p.m.

14 ---On resuming at 3:15 p.m.

15 THE CHAIRMAN: Thank you. Be seated.

16 MS. MURPHY: Q. Mr. Cary, you were about
17 I believe to speak to the last part of the area
18 inspection discussion and that was to summarize part of
19 the area inspection planning or area inspections in
20 area of concerns; is that right?

21 MR. CARY: A. That's correct. So with
22 regard to the compliance monitoring program for areas
23 of concern, we consider it wise to develop specific
24 prescriptions for areas of concern so that the value is
25 protected. We also consider it wise to require

1 reporting where the compliance with those prescriptions
2 has occurred. This is a formal upfront development of
3 a compliance monitoring program and it will be
4 contained in the timber management plan.

5 The prescriptions of each area of concern
6 will be monitored for compliance and the results
7 registered by area inspections report -- area
8 inspection reports will be reported as part of the
9 report of past forest operations of the timber
10 management plan.

11 Q. So that would be in the next plan,
12 over the period of time the inspections will take
13 place, and the report would happen in the next plan?

14 A. The report of past forest operations,
15 yes.

16 THE CHAIRMAN: So theoretically you could
17 have a four-year catch up; right? You could have
18 something that was supposed to be done in the first
19 year, specific prescriptions, and you end up doing your
20 area inspections or other monitoring, and that would
21 show up in the report of past forest operations in the
22 next plan, which could be four years away?

23 MR. CARY: The prescriptions to areas of
24 concern will then be developed as part of the TMP five
25 or six years in advance of the harvest in some of those

1 areas, okay. So...

2 THE CHAIRMAN: No, but what about an area
3 where you have harvested, you have got an approved
4 plan--

5 MR. CARY: Yes.

6 THE CHAIRMAN: --your annual work
7 schedule has been approved and you are going to harvest
8 in that area in, say, the first year or the second
9 year--

10 MR. CARY: Yes.

11 THE CHAIRMAN: --and then you are within
12 an area of concern as well, so that you do your
13 compliance monitoring and do some reporting, the
14 results of that compliance monitoring will not show up
15 until your next plan; is that correct?

16 MR. CARY: No, they will be registered in
17 the report of past forest operations which is part of
18 that plan -- sorry, yes, you are right, I am getting
19 confused now.

20 The report of past forest operations, and
21 I think that was explained to you in Panel 15, looks at
22 the operations during the previous period.

23 THE CHAIRMAN: Of five years?

24 MR. CARY: Yes.

25 THE CHAIRMAN: But it could also look at

1 the operations in the first year of the previous five
2 years?

3 MS. MURPHY: Q. Perhaps it might be
4 easier if we take it step by step. Starting with the
5 timber management plan itself being developed and the
6 plan for compliance monitoring for areas of concern
7 which would be written in that plan--

8 MR. CARY: A. Yes.

9 Q. --first of all. Will that plan
10 indicate the nature, frequency and timing of the area
11 inspections that are intended to take place in those
12 areas of concern?

13 A. That's exactly what --

14 THE CHAIRMAN: Okay. What about the
15 results of those inspections? When does the public at
16 large learn the results of those inspections with
17 respect to activities which occurred in the first year
18 of the five-year plan?

19 MR. CARY: The area inspection report
20 will be completed after -- when compliance is met with
21 that particular reserve and that area inspection report
22 is then available to the public the day after, for
23 example, in the district office.

24 THE CHAIRMAN: Okay.

25 MR. CARY: Okay. So that's the first

1 opportunity.

2 THE CHAIRMAN: All right. So they have
3 an opportunity then, they don't have to wait for the
4 next plan?

5 MR. CARY: No.

6 THE CHAIRMAN: Okay. Well, that's the
7 point I am trying to make. Okay.

8 MR. CARY: The results that are
9 registered by the area inspection process for AOCs is
10 registered in a table called 4.12X and that table is a
11 part of, as I said, the report of past forest
12 operations. And that table registers, and it is a
13 public table, it registered whether compliance with
14 those prescriptions has occurred.

15 That report will also contain an analysis
16 and summary of actions that are taken as a result of
17 non-compliance. And this bit of information, this
18 summary will be considered during the preparation of
19 the next five-year timber management plan.

20 THE CHAIRMAN: And will show up in the
21 report on past forest operations?

22 MR. CARY: Past forest operations, yes.

23 THE CHAIRMAN: Thank you.

24 MR. CARY: Now, some of the reasons for
25 the formalization of the area of concern compliance

1 monitoring program are as follows:

2 Practically, it makes sense to plan for
3 what could be an enormous task years ahead and it may
4 be planned then five or six years ahead and, in that
5 event, you would be able to make proper arrangements
6 and properly prioritize your efforts so that you can
7 indeed carry out a monitoring program at the right
8 place and at the right time.

9 There are higher risks in areas of
10 concern compared to normal areas of operations, and so
11 the consequences of non-compliance are more serious in
12 AOCs. So that's another reason for us developing a
13 formal process. And it is because there are specific
14 prescriptions for areas of concern we can then consider
15 the best way to inspect and monitor them.

16 Silvicultural ground rules in normal
17 operating areas are not as specific. They may, as you
18 have heard, contain options; for example, they may
19 prescribe site preparation and in the plan they will
20 prescribe site preparation, but you don't know five or
21 six years in advance whether that site preparation will
22 be mechanical or whether it will be prescribed burn.
23 Monitoring for mechanical site preparation and
24 prescribed burning will be a very different beast.

25 THE CHAIRMAN: And did I understand you,

1 Mr. Cary, to say that with respect to each individual
2 area of concern there will be in the plan that
3 ultimately is approved the specifics of how the
4 compliance monitoring, frequency, methodology, et
5 cetera, will be carried out for each AOC?

6 MR. CARY: Yes, that's correct. We may
7 clump some AOCs--

8 THE CHAIRMAN: Of a similar nature
9 together?

10 MR. CARY: --of a similar nature and a
11 similar value together and have a generic but specific
12 prescription for those areas of concern.

13 The compliance monitoring program for
14 areas of concern will include, as a minimum, an account
15 of how the inspection will be carried out; i.e., from
16 the air, from the ground, or via photography, when and
17 how often it will occur. I would like to re-emphasize
18 that the --

19 THE CHAIRMAN: And who will carry it out?

20 MR. CARY: Yes. There will be -- by
21 nature, there will be an inference and I'm not quite
22 sure whether -- Mr. Chairman, could I ask you a
23 question. When you mean who?

24 THE CHAIRMAN: Well, I take it, if it is
25 going to be compliance monitoring and it's an FMA unit,

1 it's going to be the Ministry?

2 MR. CARY: That's correct.

3 THE CHAIRMAN: And if it is the Ministry
4 on a Crown unit or a company management unit, it will
5 also be the Ministry, I suppose?

6 MR. CARY: Yes, the Ministry will conduct
7 the compliance monitoring.

8 THE CHAIRMAN: But will you be specifying
9 not who, like not the individual in the Ministry, but
10 the type of expertise that will be utilized to do the
11 monitoring?

12 MR. CARY: That could be well --

13 THE CHAIRMAN: In other words, whether it
14 will be done by a forester, whether it will be done by
15 a wildlife biologist, that kind of thing?

16 MR. CARY: In some instances that could
17 well be the case.

18 MS. MURPHY: Q. Would it depend on what
19 value--

20 MR. CARY: A. Yes.

21 Q. --was in the area of concern?

22 A. What value it would be protecting.

23 And, of course, it would depend on the risk too, it
24 would depend on the nature, the rigorousness of your
25 compliance monitoring program. And if it was entirely

1 key to have a biologist go out there, then that
2 prescription --

3 THE CHAIRMAN: Well, I guess what I am
4 really alluding to is that for compliance monitoring to
5 have some degree of credibility, it would be suggested
6 that the people who carry out the activity should not
7 be the people who are doing the monitoring necessarily.

8 MR. CARY: Yes, I agree with that.

9 THE CHAIRMAN: In other words, they would
10 be reviewing their own deficiencies, if such were the
11 case.

12 MR. CARY: Ministry staff will be doing
13 this.

14 THE CHAIRMAN: Well, it will be Ministry
15 staff but not--

16 MR. CARY: And qualified Ministry staff.

17 THE CHAIRMAN: --a forester on the unit
18 that was responsible necessarily for setting in place
19 some of the very prescriptions?

20 MR. CARY: The forester and his staff
21 will be monitoring compliance with those prescriptions,
22 yes. The licensee will be conducting the operations on
23 the management unit and the forester and his staff and
24 the district manager and his staff will be making sure
25 that those operations are conducted in accordance with

1 plans, all the compliance monitoring programs.

2 THE CHAIRMAN: All right. Well, I
3 suppose that example it is not that crucial to have
4 independence there in the sense that the forester is
5 not conducting the activities.

6 MR. CARY: That's correct.

7 THE CHAIRMAN: Or carrying out the
8 prescriptions per se.

9 MR. CARY: No, the operator is.

10 THE CHAIRMAN: But I think there is a
11 value of having different people monitoring somebody
12 else's activities, rather than their own.

13 MR. CARY: Yes, there is, but I should
14 remind you that we don't carry out those activities.

15 THE CHAIRMAN: That's right.

16 MR. MARTEL: But you are doing the
17 planning.

18 MR. CARY: Yes, we are.

19 MR. MARTEL: And if the same people are
20 going to be -- after they have done that, the planning
21 team who have done the plans for a unit, unless you
22 were going to move them on to work in a different unit,
23 in fact they are going to come back and do their own
24 unit?

25 MR. CARY: Now, on a Crown management

1 unit the Crown forester is primarily responsible for
2 preparing the plan.

3 MR. MARTEL: Right.

4 MR. CARY: The licensees on that Crown
5 unit are obligated to follow those plans and he
6 monitors to make sure that they do, and we use
7 qualified staff to do that.

8 MR. MARTEL: And on a Crown unit it is
9 going to be the licensee; on a company unit it will be
10 you looking into the company.

11 MR. CARY: Yes.

12 MS. MURPHY: Q. Let's clarify that. The
13 description that you just gave, Mr. Cary--

14 MR. CARY: A. Was a Crown unit.

15 Q. --was a Crown unit; was it not?

16 A. Yes. Mr. Martel, yes.

17 Q. And on a Crown management unit you
18 were explaining the plan will be developed by the Crown
19 forester?

20 A. Yes.

21 Q. The operations undertaken by
22 licensees?

23 A. Yes, and that the Crown forester
24 would then monitor those operations --

25 MR. MARTEL: Some of it is your own work,

1 though.

2 MR. CARY: Well, it is certainly not the
3 harvest.

4 MR. MARTEL: No.

5 MR. CARY: It's conducted by somebody
6 else.

7 MR. MARTEL: But the regen could be.

8 MR. CARY: The renewal--

9 MR. MARTEL: Yes.

10 MR. CARY: --could be supervised by us.

11 MR. MARTEL: You could hire --

12 MR. CARY: It could be contracted out to
13 somebody else and we will monitor the conditions of
14 that contract to ensure that the contractor does what
15 he is supposed to do, and the same for maintenance as
16 well.

17 MR. MARTEL: Well, for the junior forest
18 rangers who do some planting, who is going to supervise
19 them?

20 MR. CARY: We hire people to supervise
21 them.

22 MR. MARTEL: And they are doing the work
23 for you?

24 MR. CARY: And there is the normal checks
25 and balances of good performance used there. If our

1 crew bosses don't do a good job, they don't last very
2 long. We make sure that there is quality regeneration
3 and maintenance going on in those units.

4 MR. GORDON: Maybe I can pick up on your
5 example, Mr. Martel. For example, I was involved in a
6 project where I set the prescription for some junior
7 rangers to plant a certain type of tree in a certain
8 area, and so basically they were carrying out work for
9 myself.

10 The monitoring was carried out on one
11 occasion by the senior technician who reported directly
12 to me, and on another day I was out there and I
13 checked. And I would suggest to you that I hope that
14 that is acceptable. And if I am not doing my job, if I
15 am not picking up problems out there and documenting
16 them, then I have got a supervisor who is supposed to
17 take care of that, and if he wasn't doing that, then we
18 have a district manager. And if we can't do it that
19 way, I don't know what the other alternative is, unless
20 we hire a lot more staff or spend a lot more money.

21 MR. CARY: And then we have a bunch of
22 auditors coming along later and having a look at our
23 operations.

24 MS. MURPHY: Q. Which you are going to
25 be telling us about in just a couple of minutes; is

1 that right?

2 MR. CARY: A. I hope so, yes.

3 MR. GORDON: A. This isn't always
4 totally correct, but generally the activities that
5 people have a lot of concern about are the harvest and
6 access activities and they will be carried out not by
7 MNR, except for the odd road in Crown units that we
8 will build directly ourselves, but usually by another
9 party. And so from that point of view, you have
10 another party monitoring compliance.

11 MR. CARY: And that's pay for
12 performance.

13 MR. MARTEL: And that's the arm's-length
14 sort of situation you are really trying to convey here,
15 that they are doing the work for you and, therefore,
16 you are not monitoring the plan, but the effect of what
17 has been planned?

18 MR. CARY: We are monitoring to see that
19 the prescriptions in the plan are carried out and they
20 are carried out. We put those standards in contracts
21 and then monitor the contractor to make sure he puts
22 those particular results in the plan into effect.

23 THE CHAIRMAN: Okay. I think we have
24 exhausted that area of concern.

25 MR. CARY: It exhausted me.

1 THE CHAIRMAN: That's our prerogative and
2 you're unfortunate--

3 MR. CARY: I'm just a humble forester.

4 THE CHAIRMAN: --predicament.

5 MR. CARY: I should like to emphasize
6 that the formal monitoring program for areas of concern
7 must be practical and flexible; it should allow some
8 opportunity for inspections using alternate methods or
9 alternate timing, with the proviso that the levels of
10 environmental protection is not diminished.

11 The important terms and conditions that
12 pertain to areas of concern and area inspections are
13 term and condition No. 8(d) which commits MNR to report
14 on monitoring results in areas of concern as part of
15 the report of past forest operations, and No. 17 in
16 which MNR is committed to outlining in the timber
17 management plan a compliance monitoring program of
18 inspections of operations in areas of concern.

19 That concludes my remarks, Ms. Murphy, on
20 area inspections.

21 MS. MURPHY: Q. Now we are going to hear
22 about operational audits.

23 MR. CARY: A. Yes, we are.

24 MS. MURPHY: You will recall, Mr.
25 Chairman, in scoping you indicated that you would like

1 to know some more about operational audits and how they
2 are carried out.

3 MR. CARY: As Ms. Murphy said, the Board
4 had some questions about operational audits and there
5 were a number of interrogatories about this topic. In
6 particular, Forests for Tomorrow asked us in their
7 Interrogatory No. 20 for copies of all MNR audits since
8 1980. In response, we provided a list of over 800 such
9 audits.

10 MS. MURPHY: And that is in Exhibit 928A,
11 Mr. Chairman.

12 MR. CARY: So I would like to provide you
13 with an elaboration on what operation audits are and
14 how they are conducted. As I said earlier this
15 morning, or I said this morning, operational audits are
16 one level of the Ministry auditing another.

17 The first level is the main office audit
18 of region, and the second level is the regional
19 office's audit of districts.

20 As we explained in the evidence, main
21 office conducts audits of each region once every four
22 years; regions conduct audits of their districts every
23 two or three years. The Ministry is committed to
24 conducting operational audits and term and condition
25 No. 56 lays out that commitment. It is also committed

1 to conducting fifth year reviews of FMAs, and Mr.
2 Tworzyanski will be telling you about FMA reviews a
3 little later.

4 Now, other types of audits, other reviews
5 and other evaluations have been and will continue to be
6 conducted from time to time on the timber management
7 program by external agencies, by committees or
8 individuals, and you have heard examples of some of
9 these:

10 The Royal Commission on the Northern
11 Environment Report by Commissioner Fahlgren, Dr.
12 Baskerville's Audit, the Provincial Auditor's Report
13 and there are numerous other reports of this nature.
14 Our discussion this afternoon here is limited to those
15 conducted regularly by MNR and they include operational
16 audits and the fifth year reviews of FMAs.

17 Now, I would like, by the aid of a chart,
18 to compare the two levels of audit I talked about and
19 that is page 9 of Document No. -- of Exhibit No. 932.
20 I would like over the next few minutes to, as I said,
21 look at both levels and have a look at some of the
22 items that are common to both levels and some of the
23 items that we examine during an audit that are unique
24 to the main office audit of region and others that are
25 unique to the region of district.

1 I would like to start by dealing with the
2 arrangements for a main office audit first. As I said
3 before, main office carries out two audits per year,
4 one in southern Ontario and one in northern Ontario.
5 Main office or Forest Resources Group conduct these
6 audits on behalf of their respective Field Assistant
7 Deputy Ministers. Their respective Field Assistant
8 Deputy Ministers are the primary clients for these
9 audits. Each audit takes two weeks.

10 THE CHAIRMAN: What does a Field
11 Assistant Deputy Minister mean?

12 MR. CARY: A Field Assistant Deputy
13 Minister, and I think Panel 1 a long time ago explained
14 that they were in charge of all field operations in
15 their bailiwick.

16 The Field ADM sits in Thunder Bay here
17 and in the four northern regions he is responsible for
18 all operations conducted there; in southern Ontario
19 there is a Field Assistant Deputy Minister and he is
20 then responsible for all the operations that are
21 conducted in the four southern regions.

22 The region whose turn it is is contacted
23 months prior to the audit and detailed arrangements are
24 made. The arrangements are then confirmed with the
25 Assistant Deputy Minister. The audit coordinator at

1 main office chooses an audit team that is competent to
2 examine those items that we have on the overhead, and I
3 will be going through them.

4 In a similar fashion, the region contacts
5 the district prior to the audit and makes arrangements
6 with the district manager for either a two- or
7 three-day audit visit. So that is the regional
8 director auditing the district. The regional forester
9 then usually leads a team of regional staff that are
10 competent to examine those items that you see on the
11 overhead.

12 The objective of both levels of audit are
13 primarily focused on compliance, but I would like to
14 point out that the region has an additional
15 responsibility; and, that is, to examine the quality
16 and effectiveness of district silvicultural operations
17 on the management unit on the ground.

18 Now, as I will explain later, main office
19 does indeed go to districts during that two-week
20 period. Now, that visit is to confirm the delivery of
21 the timber management program at the district and so,
22 by doing that, the main office audit team confirms the
23 evidence that it finds in the region.

24 There is also quite naturally a
25 difference between the two levels; and, that is,

1 geography. At the district the geography is much
2 smaller, it is three or four management units; in the
3 region it would be 20. It is three or four timber
4 management plans at the district; at the region it
5 could be 20. So at the districts it is getting down to
6 examining that bit of project geography.

7 Now, I would now like to lead you through
8 these items and give you some information on how we
9 look at each one of them in term. Now, no one audit is
10 exactly the same as another audit, and by this I mean
11 there may be variation in emphasis on these items
12 depending on where you go, depending on the focus the
13 audit teams wishes to put on this particular audit. So
14 the audit team member who is responsible for one of
15 these items conducts interviews either with the
16 regional staff at the main office level, or with
17 district staff down at the district, he conducts the
18 interviews and then examines records for the period
19 since the last audit.

20 So the time frame for the main office of
21 region audit is four years, so you will have a look at
22 records back four years, but when the region goes to
23 the district they will have a look back two or three
24 year to the time of the last audit.

25 Now also, the auditors look for

1 opportunities beyond the bean counting to suggest or
2 recommend improvements or efficiencies. So indeed if
3 they can detect and suggest improvements, they do. So
4 it is not just bean counting.

5 The first item that an audit team would
6 examine would be, as I have indicated, previous audit
7 follow-up: How did the region or the district do in
8 implementing the recommendations of the previous audit.
9 In the timber management planning area the auditors
10 would check to see, on the one hand, if the region is
11 adhering to the Timber Management Planning Manual,
12 whether it is scheduling plans for preparation
13 correctly, whether it is reviewing plans correctly,
14 they have a look at consistency in plan amendments,
15 timber management planning records, reports.

16 The audit of the district by region would
17 look at individual timber management plans. Similarly,
18 licensing programs at both levels will be looked at:
19 Did the region adhere to licensing policy and
20 procedure. At the district the local licensing would
21 be examined to ensure that it conforms to policy and
22 procedure.

23 The cut inspection program would be
24 looked at at the district in this particular area.
25 Wood measurement practices and procedures would be

1 looked at in a similar vein: Was the region
2 conforming, was the district conforming. Wood
3 measurement audits would be looked at, scaling records
4 would be looked at.

5 In northern Ontario where there are
6 forest management agreements, the FMA program is
7 examined. The region's adherence to the policies and
8 procedures that pertain to FMAs would be checked,
9 consistency of FMA development would be checked,
10 invoice verification procedures would be examined and
11 checked. And you have heard Mr. Tworzyanski tell you
12 about the invoice verification procedure earlier.

13 At the district the region would examine
14 individual FMAs in looking at the Crown's role - I want
15 to stress that, this is the Crown's role - and invoice
16 verification right there on that individual FMA would
17 be looked at.

18 In southern Ontario private land forestry
19 would be examined. Again, regional adherence to policy
20 and procedure and how the district is doing in
21 responding to local public requests for assistance, how
22 the Woodlands Improvement Act program was being
23 implemented, how agreement forests were being run.

24 In work program planning at the main
25 office of region level, at main office the main office

1 team would look at how the region develops its work
2 program plans. Does the region conform to the
3 Ministry's system? Is it adhering to the specific
4 directions that the Field Assistant Deputy Minister
5 issues with regard to prioritization of activities? We
6 would have a look at unit costs, how do the unit costs
7 of this region compare to other regions? Did you meet
8 your targets, did you do what you said you would do?

9 The similar sort of questions would be
10 asked by the region of the district: Did the district
11 follow the prioritization instructions that the region
12 issued?

13 Panel 8 told you about the
14 forester-in-training program and main office checks to
15 see that the proper training program is instigated for
16 the forester, for the recent graduates so that he is
17 properly trained and their performance is monitored.
18 If the forester-in-training position is at the
19 district, the region would examine that specific
20 training program. Staff training would be looked at:
21 Was the region holding timber-related courses for its
22 staff? District staff training would be checked by the
23 region.

24 And, lastly, on the common elements, the
25 organization of both the regional office and the

1 district office would be examined. The question here
2 is: Are the staff carrying out the tasks that they
3 should carry out?

4 Now, just to have a quick look at some of
5 the areas that are unique. The main office level looks
6 at the health of the forest in the particular region
7 and questions like: Are you conforming to the
8 provincial budworm strategy, would be asked. You will
9 see that silviculture is in both columns. In the main
10 office of region it is called silviculture; in the
11 region of district it is called silvicultural records
12 and silvicultural practice.

13 Both audits indeed cover silviculture,
14 but as I said to you earlier, the reason for me
15 splitting that up is that the levels examine it
16 differently. Main office of region, regional
17 silvicultural records are examined: Is the region
18 using the provincial silvicultural guide? Should there
19 be regional standards, are they being used? Is there
20 evidence of appropriate inter-district contact and
21 consistency in silvicultural practice? How are
22 silvicultural contracts being administered, are they
23 being consistently administered?

24 Now, to verify all of this, as I have
25 said earlier, the region -- the main office group does

1 go to the districts and it verifies that the program --
2 the silvicultural program is indeed being delivered.

3 Now, at the district there is a more
4 detailed look by the region. Silvicultural records at
5 each management unit are looked at, how they are
6 aggregated to the district level is looked at.
7 Silvicultural practice, here the region would examine
8 contract administration: Did the district follow the
9 timber management planning prescriptions? Did it
10 follow silvicultural groundrules? Are the regional
11 standards being considered? And field visits are
12 undertaken to look at a sample of projects on the site
13 out there in the field: Are the results of the
14 silvicultural operations acceptable? Is the quality
15 acceptable? Are the efforts effective?

16 Now, back to main office. The regional
17 program of district audits will be examined for
18 frequency, consistency and content. The regions
19 develop a multi-year audit schedule for their district:
20 Was this being adhered to, the previous district audit
21 findings, had they been implemented? So those are the
22 questions that the region would ask -- that the main
23 office would ask the region there.

24 And lastly, the main office group checks
25 the regional Forest Production Policy Implementation

1 Schedule against the actual annual achievement of the
2 region over the last four years, or since the last
3 audit. So this marks the end of the field part of the
4 audit, and what happens now?

5 Well, I would like to tell you what
6 happens at the first level, the main office of region
7 first. After that two-week period, the preliminary
8 findings of the audit are presented to the Field
9 Assistant Deputy Minister, the Executive Director of
10 Forest Resources Group and the Regional Director. The
11 team then prepares a formal report with recommendations
12 and gives it to the Executive Director who hands it to
13 the Field Assistant Deputy Minister. The Field
14 Assistant Deputy Minister then instructs the Regional
15 Director to implement the findings of the report, and
16 they are usually set out in recommendation style.

17 Usually then a plan is prepared by the
18 region for the Assistant Deputy Minister in which a
19 schedule for implementation is set out. I would like
20 to emphasize that the recommendations of the
21 operational audit should be implementable, they should
22 be practical and they should be accompanied by
23 realistic time frames for implementation.

24 THE CHAIRMAN: Which of those documents
25 are public, the preliminary report, the formal report

1 and the directives for implementation of those
2 recommendations?

3 MR. CARY: The formal report contains the
4 recommendations for implementation and the plan is then
5 prepared by the Regional Director to set those
6 recommendations into action. And your question was:
7 Which is public?

8 THE CHAIRMAN: Which of those documents
9 are public?

10 MR. CARY: Audits have traditionally been
11 internal documents. If we were to make them public, we
12 would have to very carefully look at the content. They
13 are not written as public documents because
14 occasionally they may refer to staff in some way. So
15 if they were public documents written for public
16 consumption, so to speak, they would have to be quite
17 carefully written, but at the moment they are not
18 public documents in the way that is normally
19 considered.

20 However, we have given examples of audits
21 in our evidence and sent examples of audits to those
22 intervenors that have asked for those.

23 MS. MURPHY: Excuse me, if I might just
24 clarify. They are certainly not normally published
25 documents; however, with respect to Freedom of

1 Information those documents would be available with the
2 proviso of course that the Freedom of Information
3 requirements to look at potential comments about
4 individuals would have to be looked at.

5 That would just require looking at the
6 document by the Freedom of Information officer in
7 making that judgment.

8 But with respect to the current Freedom
9 of Information rules, they would be available on
10 request.

11 THE CHAIRMAN: Okay.

12 MS. MURPHY: With that proviso, of
13 course. We would have difficulty providing 800 on
14 request though.

15 MR. CARY: Then as the next step, the
16 Forest Resources Group on behalf of the Assistant
17 Deputy Minister keeps in touch with the region to
18 monitor their progress with regard to audit
19 implementation. The cycle then closes four years
20 hence.

21 And finally, the region of district. On
22 the last day of the audit the regional staff meet with
23 the district staff to discuss their findings. After
24 this a formal report is written, again, with realistic
25 recommendations and time frames for completion.

1 The Regional Director then approves the
2 report and instructs the District Manager to implement
3 its findings. Similarly, the regional forester on
4 behalf of the Regional Director contacts the district
5 periodically to monitor their progress with regards to
6 audit implementation. And this audit cycle is repeated
7 every two or three years.

8 Now, as I mentioned earlier, Mr.
9 Tworzyanski will tell you about FMA reviews and then
10 Dr. MacLean will speak briefly about the Ministry audit
11 program as it relates to fisheries, to wildlife and to
12 tourism.

13 MS. MURPHY: And just for the record, the
14 statement of evidence contains examples of two audits.
15 One is the audit of Northwest Region in 1985 and that
16 commences on page 60 of the statement of evidence, and
17 the other example is the audit of Terrace Bay District
18 by the region, 1988, and that commences at page 114 of
19 the statement of evidence. So there were examples
20 provided of each type.

21 MR. TWORZYANSKI: Mr. Chairman, I would
22 like to refer the Board now to page 11 of Document 932
23 entitled: FMA Review, with the first bullet point
24 starting:

25 "MNR has control..."

1 In addition to the normal operational
2 audit process which Mr. Cary has just described, forest
3 management agreements have a five-year review. As Mr.
4 Cary indicated, the Ministry has essentially control
5 over the -- its own work, the quality of work
6 contracted by the Ministry and of staff that work for
7 the Ministry directly with respect to program delivery.

8 And as I indicated earlier this
9 morning -- or this morning, FMAs are different insofar
10 as they have an assigned responsibility through the FMA
11 agreement and are responsible for their results.
12 However, FMAs, like all Ministry programs, are subject
13 to what I would call the day-to-day scrutiny of MNR
14 staff in terms of the application of silvicultural
15 ground rules in the field, the evaluation and approval
16 of annual work schedules, the invoice approval process
17 which I described earlier, the future area inspection
18 just described by Mr. Cary, and the current technical
19 inspections which involve a variety of field activities
20 and, of course, they are subject to the operational
21 audit process in terms of MNR's program delivery.

22 As landlord of the Crown lands in terms
23 of the FMA program, the Ministry needed assurances that
24 the agreement was being complied with so, therefore,
25 the agreement has a section in it which deals with the

1 fifth year review. This requirement is specifically
2 found in Exhibit 915, which is our statement of
3 evidence, on page 180 and that's a sample FMA agreement
4 and it is Section 29 entitled: Evergreen, which
5 commits the Minister of Natural Resources to carrying
6 out a fifth year review of the FMA.

7 The first two reviews which MNR conducted
8 were done by senior Ministry staff. The reason we used
9 our own staff in the first case was to determine what
10 kind of program controls should be on the FMA program
11 and also to expose senior Ministry staff to what was a
12 new program.

13 The third, fourth and fifth reviews were
14 done by contract staff who are expert in the forestry
15 field, both in timber management and industry, and in
16 other forest uses, and we used people with expertise in
17 biological sciences for that end of it.

18 The reason that we went to contract staff
19 is that with the number of FMAs and the anticipated --
20 or the expected schedule of reviews, we simply didn't
21 have enough senior staff available for a long enough
22 period of time to go from their regular jobs to perform
23 this activity.

24 The other point was that we thought it
25 would be useful to obtain an outside view and summary

1 of the documentation and the day-to-day reviews and
2 involvement that the Ministry has with the FMA program
3 to pull that together and to provide an assessment and
4 make a comparison of FMAs.

5 If I could go on to the next overhead,
6 which is page 12, I will describe the FMA review
7 process which forms the terms of reference for a review
8 team specifically. This review process has been used
9 on the third, fourth and fifth FMA reviews and the
10 third is one of the ones that has been filed in
11 evidence.

12 MS. MURPHY: And for the record, three
13 FMA reviews have been filed to date at the hearing and
14 they are Exhibits 31, 68 and 69.

15 MR. TWORZYANSKI: As I indicated, the FMA
16 review is required by the agreement and requires an
17 assessment of company compliance with the agreement
18 conditions and the planning documents. The five-year
19 review terms of reference specifically evaluates -- and
20 I will go through these individually and elaborate
21 somewhat.

22 The review team has to look at plan
23 preparation. Under the agreement, there are
24 requirements in terms of plan submission dates for the
25 company and the review team evaluates whether those

1 submission dates were complied with.

2 The team evaluates plan implementation.
3 It looks at the proposed locations in the timber
4 management plan, the proposed levels of activity and
5 evaluates how well those have been implemented over the
6 five-year period prior to the review which is
7 coincident with the planning period, the five-year
8 plan.

9 It looks at whether the provisions of the
10 ground rules have been followed and that can be done by
11 looking at the ground rules and comparing them to the
12 silvicultural prescriptions the company has made and
13 then following those through to the actual
14 implementation on the ground.

15 Levels of harvest are looked at. The FMA
16 holder under the agreement agrees to harvest at a
17 particular level consistent with the requirements
18 identified in the timber management plan, and the
19 review team evaluates the accuracy of those predictions
20 for the annual harvest and looks at any surplus
21 calculation which was made by the FMA holder.

22 The FMA holder has an obligation under
23 the agreement to regenerate not satisfactorily
24 regenerated lands and, I should add, to either
25 regenerate or to tend not satisfactorily regenerated

1 lands. There is a number in, I believe, Schedule B of
2 the agreement which specifies the amount of area that
3 has to be done and the agreement holder has to do five
4 per cent of that per year over a 20-year term to do the
5 full 100 per cent of treatment required. Generally,
6 that level of activity is done well in excess of the
7 five per cent minimum.

8 Road construction is looked at in terms
9 of the road types and the location on the ground.

10 The agreement looks at report -- sorry,
11 the review team looks at report preparation. This is
12 somewhat of a duplication insofar as the agreement
13 holders, as other people implementing timber management
14 plans, are required to provide annual reports through
15 the timber management planning process and the review
16 team looks at the summary of those on a five-year
17 basis.

18 The review team also looks at the
19 recordkeeping procedures that the company has in terms
20 of identifying silvicultural projects and tracking them
21 through to completion or to a certain level of success.

22 In conjunction with this recordkeeping
23 process, the review team undertakes field inspections.
24 They will take a project and track it from its
25 inception in the timber management plan through to a

1 project proposal, through to field implementation,
2 submission of an invoice, and then will investigate
3 that project specifically in the field to verify that
4 it does exist and did conform to the standards defined
5 in the timber management plan.

6 Other forest uses are looked at in terms
7 of the company's obligation to comply with certain
8 conditions that are identified in the timber management
9 plan. The review team also discusses with the company
10 their concerns in terms of the process and these are
11 reflected somewhat candidly in the three agreements
12 that have been tabled earlier.

13 The review team also takes a cursory look
14 at the relationship between harvest and growth and
15 provides a report on that in the fifth year review.

16 The final aspect of the review then --
17 team then is to provide a recommendation on whether the
18 agreement should be extended or should not be extended.
19 If the agreement holder has not complied with the
20 agreement conditions or with the planning documents in
21 a substantive way, a condition would be placed on the
22 agreement holder to correct that deficiency and
23 agreement would not be extended until that deficiency
24 was corrected.

25 THE CHAIRMAN: And just to recap from

1 earlier evidence, it is a 20-year FMA term but
2 renewable every five years; is that right?

3 MR. TWORZYANSKI: That's correct. The
4 agreement starts at 20, counts down to 15, a five-year
5 review is done, if it is a satisfactory, the agreement
6 goes back to 20; if it isn't, it is still a 15 -- it is
7 only a 15-year agreement at that point.

8 When the agreement is then extended, it
9 is back to 20 again.

10 THE CHAIRMAN: So unless there is a major
11 default or problem with the FMA holder, it would
12 continue on supposedly at a 20-year term forever?

13 MR. TWORZYANSKI: That's correct. That's
14 the Evergreen provision.

15 THE CHAIRMAN: Okay.

16 MR. TWORZYANSKI: In summary, the
17 transfer of the responsibility for implementing the
18 planning, renewal and maintenance activity by the FMA
19 holder required, as I've described, an administrative
20 change from the Ministry's hands-on delivery to one of
21 results by the FMA holder.

22 A slightly different administrative
23 process has evolved and that was to ensure that the
24 Crown -- I am sorry, that the Ministry, as landlord of
25 Crown lands, would have assurances that those lands

1 were being appropriately managed.

2 And that concludes my portion, Mr.
3 Chairman.

4 MS. MURPHY: And, in conclusion, we have
5 Dr. MacLean who is going to give us a few words about
6 operational audit and essentially the wildlife program.

7 Q. You have some words to say about
8 that, sir?

9 DR. MacLEAN: A. That's correct. Mr.
10 Cary referred to two levels of operational audit and I
11 want to speak very briefly about operational audits of
12 the fisheries and wildlife programs.

13 Firstly, the regional audits of districts
14 are carried out with a similar scope and process to
15 those discussed by Mr. Cary for the timber program.

16 I think it is clear from our response to
17 Forests for Tomorrow's Interrogatory No. 20, which is
18 part of Exhibit 928A, that main office audits of
19 regions are not -- have not been carried out in the
20 same way as discussed by Mr. Cary.

21 The major differences have been, firstly,
22 there has been relatively few formal audits of regions
23 by main office; and, secondly, audits have tended to
24 focus on components of the program rather than the
25 whole program. Adherence to provincial policies and

1 procedures has more often been checked through review
2 of draft plans at regional and district levels by main
3 office staff and by discussion at main office and
4 regional committees. And I think it is fair to say
5 there has been a growing dissatisfaction with this
6 approach at both the regional and main office levels.

7 With respect to operational audits for
8 the provincial guidelines for fish habitat, moose and
9 tourism, Fisheries Branch and Wildlife Branch are
10 committed to formal operational audits of the
11 application of these guidelines. This is referenced in
12 the proposed term and condition No. 56. We propose to
13 work with Mr. McNicol over the next two years to
14 develop a procedure and schedule for these audits.

15 And that concludes my brief remarks on
16 fish, wildlife and tourism audits.

17 MS. MURPHY: Thank you. That concludes
18 the evidence on Document 1, Mr. Chairman. Can you
19 advise me what time you wish to rise today?

20 THE CHAIRMAN: Well, probably 5:00 or
21 5:30. How far are you along in your production here?

22 MS. MURPHY: Well, don't book the 11:10.
23 I am not quite as far along as we--

24 THE CHAIRMAN: We wouldn't be that
25 presumptuous.

1 MS. MURPHY: --hoped, but we still
2 anticipate finishing tomorrow certainly.

3 THE CHAIRMAN: Okay. I think we will
4 take another short 10-minute break and then we will go
5 on with Document 2.

6 We will sit until 5:30 today.

7 MS. MURPHY: Thank you.

8 ---Recess taken at 4:15 p.m.

9 ---On resuming at 4:40 p.m.

10 THE CHAIRMAN: Thank you. Be seated,
11 please.

12 MS. BLASTORAH: Mr. Chairman, just one
13 housekeeping matter before we go on to the next
14 document.

15 I have hard copies of the overheads for
16 Document No. 3 now that I would like to file. I have
17 three separate packages, however, one of the packages
18 were unfortunately stapled in the wrong order, so what
19 I am proposing is to reserve an exhibit number for that
20 package which relates to Dr. Osborn's evidence and I
21 will provide those copies first thing tomorrow morning.

22 THE CHAIRMAN: Okay. I think we are up
23 to Exhibit 934.

24 MS. BLASTORAH: I believe that's correct.

25 ---EXHIBIT NO. 934: Hard copy of overheads relating to

1 (Reserved) Dr. Osborn's evidence. (Document
2 No. 3)

3 MS. BLASTORAH: The first package is a
4 package of eight overheads relating to Mr. Gordon's
5 evidence on timber management effects and
6 effectiveness.

7 THE CHAIRMAN: So will this be 935?

8 MS. BLASTORAH: I believe it is 934;
9 isn't it?

10 THE CHAIRMAN: No, you wanted to reserve
11 a number to get it restapled. Is this the one you are
12 talking about?

13 MS. BLASTORAH: No, this one I have a
14 copy of.

15 THE CHAIRMAN: So this will be 935.

16 MS. BLASTORAH: Okay, yes. I am sorry, I
17 didn't think 934 had been marked yet.

18 ---EXHIBIT NO. 935: Hard copy of eight overheads
19 relating to Mr. Gordon's evidence
20 re timber management effects and
 effectiveness. (Document No. 3)

21 MS. BLASTORAH: The next is -- well, the
22 next one will be the reserved number.

23 THE CHAIRMAN: I thought 934 was the
24 reserve for the hard copies of the overheads with
25 respect to Document No. 3?

1 MS. BLASTORAH: Well, these are all with
2 respect to Document No. 3.

3 THE CHAIRMAN: Okay. Dr. Osborn's
4 evidence.

5 MS. BLASTORAH: Okay. Dr. Osborn's
6 evidence.

7 THE CHAIRMAN: And 935 are the hard
8 copies with respect to Document No. 3 for Mr. Gordon's
9 evidence.

10 MS. BLASTORAH: That's correct. And that
11 specifically is Mr. Gordon's evidence with relation to
12 timber management effects and effectiveness.

13 And the last one is another package of
14 overheads, again relating to Mr. Gordon, but a separate
15 topic. This is a package of six overheads relating to
16 new funding estimates concerning the draft terms and
17 conditions.

18 THE CHAIRMAN: Okay. That will be
19 Exhibit 936.

20 MS. BLASTORAH: Thank you. (handed)

21 THE CHAIRMAN: Thank you.

22 ---EXHIBIT NO. 936: Hard copy of six overheads
23 relating to Mr. Gordon's evidence
24 re new funding estimates
25 concerning the draft terms and
conditions. (Document No. 3)

MS. MURPHY: We are going to commence the

1 evidence about Document No. 2. Dr. MacLean will begin
2 and if you will refer back to your Exhibit 933, those
3 are the overheads that will be used by this group.

4 DR. MacLEAN: Mr. Chairman, Members of
5 the Board, we have got two objectives in presenting
6 Document No. 2. The first of these is to provide you
7 with an overview of the Ministry's monitoring program
8 for non-timber values.

9 In previous panels you have heard about
10 potential effects on these values, you have heard about
11 the guidelines that we have developed to deal with
12 these potential effects, you have heard about our
13 uncertainty both about effects and how well those
14 guidelines work. We have also discussed the ESSA
15 exercise that we have used to develop the monitoring
16 program.

17 And what we would like to try and do this
18 afternoon is begin to close the loop, to tell you about
19 the monitoring program that's designed to address
20 uncertainties and to improve our management of
21 non-timber values.

22 MS. MURPHY: Okay. If we can just wait
23 one minute before we carry on. Have you been able to
24 locate your copy of that exhibit?

25 THE CHAIRMAN: No -- oh, wait. 933, yes.

1 MS. MURPHY: 933.

2 THE CHAIRMAN: Thank you.

3 DR. MacLEAN: The second objective that
4 we have is to address the issues raised by the Board
5 and by the other parties about Document 2.

6 Turning to page 2 of Exhibit 933, we have
7 tried to distinguish in Documents 2 and 3 between
8 effects and effectiveness monitoring, and I would like
9 to try and clarify why we think it is important to make
10 this distinction and how the Ministry uses the two
11 terms.

12 The figure that you see on the overhead
13 is an adaptation of that that was presented by Dr.
14 Osborn at the start of this panel and Figure No. 1 on
15 page 425 of the statement of evidence for Panel 16.

16 The distinction between effects and
17 effectiveness monitoring became important during the
18 ESSA exercise when we were designing the provincial
19 monitoring program for fish habitat, moose and tourism
20 and had to keep straight in our heads two different
21 objectives that we had.

22 Starting at the top of the overhead with
23 timber management activity, we begin by monitoring
24 timber and non-timber values in areas where timber
25 management is being conducted and make observations

1 about effects of -- or observations about changes in
2 those values.

3 There are two questions that are faced by
4 professional staff about those observations. The first
5 question they face is whether or not the observations
6 of change in timber and non-timber values are an effect
7 of timber management activity or of some other process.
8 An example might be declines in the numbers of fish in
9 a lake which could be related to overfishing, to acid
10 rain or to timber management. Sorting out this cause
11 and effect relationship is important and requires
12 particular expertise and experience.

13 The second question requiring
14 professional judgment is: How important is the effect?
15 The answer depends on at least the risk of damage to
16 the value in question and how long that risk is going
17 to be around. Guidelines and other sets of directions
18 have been developed to deal with important effects of
19 timber management on timber and non-timber values, and
20 these directions govern further timber management
21 activity.

22 There are a second set of questions that
23 we might want to ask about guidelines and other
24 directions: How well do the guidelines work, are the
25 guidelines sufficient to protect the values they are

1 supposed to protect, or are guidelines necessary or are
2 they overly protective? And what we want to do to
3 answer these questions is to carefully monitor timber
4 management activity at a few sites to assess the
5 effectiveness of our guidelines and to modify, if
6 necessary, those guidelines and other directions based
7 on what we learn.

8 So we use effects monitoring to refer to
9 measurements that are taken to improve our
10 understanding of the effects of timber management on
11 timber and non-timber values; and we use effectiveness
12 monitoring to refer to measurements that are taken to
13 understand how well the guidelines we put in place to
14 deal with effects are working.

15 Moving to stage 3 in that same exhibit.
16 The monitoring program for non-timber values has two
17 objectives. Firstly, to assess effects of timber
18 management on other resource values and users; and,
19 secondly, to assess effectiveness of actions to
20 prevent, minimize or mitigate negative effects.

21 A lot of the monitoring program is
22 designed to simultaneously look at effects and
23 effectiveness, to carefully monitor timber management
24 activities and accomplish both of these objectives at
25 the same time. The uncertainties we have about our

1 understanding of effects and effectiveness are
2 important and the cost of making the measurements is
3 high, so it makes sense to try and accomplish -- or to
4 assess both effects and effectiveness with the same
5 monitoring design.

6 Our current understanding of non-timber
7 effects is based on scientific studies, for the most
8 part conducted outside Ontario, and on the experience
9 of MNR staff with timber management in the area of the
10 undertaking. This current understanding is summarized
11 in Tables 1, 2 and 3 of the statement of evidence for
12 this panel. Table 1, which starts on page 438, is
13 based on the results of the ESSA exercise.

14 MS. MURPHY: Can you just wait for a
15 second until we get there.

16 DR. MacLEAN: This was the exercise
17 discussed during Panel 8. So it summarizes, looking at
18 the top of the column, our understanding about three
19 resource values: fish and fish habitat, moose and
20 tourism.

21 MS. MURPHY: Q. And those are all found
22 in Table 1; is that right?

23 DR. MacLEAN: A. That's correct. The
24 table follows the format of the ESSA discussions, so it
25 links a variety of timber management actions in the

1 second column to potential effects of those actions.
2 For each effect the table indicates whether the ESSA
3 participants thought it was significant, in column 4,
4 and which resource protection guidelines had been
5 developed to protect the values from the indicated
6 effects.

7 Q. And in this case, if we are looking
8 at the top one under Resource Protection Guidelines,
9 there are shortforms there and are those shortforms for
10 some of the guidelines that the Board has heard about?

11 A. That's correct. The full titles of
12 the Resource Protection Guidelines are indicated at the
13 bottom of the table on page 442.

14 Q. And in this case it is talking about
15 the Fish Habitat Guidelines?

16 A. That's right.

17 Q. And the Roads and Water Crossings
18 Guideline and the Code of Practice are all indicated in
19 that column; is that right?

20 A. That's correct, for No. 1.

21 Q. For No. 1.

22 A. The monitoring program for non-timber
23 values has components at two levels: provincial
24 components which examine effects and effectiveness in
25 detail at a few sites, and local components which look

1 for observable effects and effectiveness across the
2 area of the undertaking.

3 Table 1 indicates whether the effect will
4 be monitored at the provincial or the local -- and/or
5 the local level, and this is indicated on the
6 right-hand side of the chart in the columns that read
7 Effect Measured in Provincial Monitoring Program and
8 Local Monitoring.

9 Q. So for the first one, it is telling
10 us that the effect -- whether the effect exists and to
11 what degree, is one of the things that would be
12 measured in that program?

13 A. Correct.

14 Q. The effectiveness of the guidelines
15 that were discussed there, it would be measured in the
16 provincial program and it also advises that in the
17 local monitoring this is something that can also be
18 observed?

19 A. That's correct.

20 Q. Thank you.

21 A. The ESSA exercise didn't deal with
22 all of the resource values that we are concerned with.
23 In Table 2, which starts on page 445, this table
24 summarizes similar information to Table 1 about
25 potential effects on the terrestrial environment.

1 On the left-hand column of Table 2 there
2 is identified a number of terrestrial values, eastern
3 cougar, bald eagle, et cetera. There is in the second
4 column a summary of the potential effects on those
5 resource values. The first two for eastern cougar,
6 probably neutral; bald eagle, probably neutral.

7 The third column indicates whether the
8 potential negative effects are considered significant.

9 The fourth column indicates mechanisms to
10 prevent, minimize or mitigate those adverse effects and
11 indicates mechanisms such as applying resource
12 environmental manuals for bald eagles, area of concern
13 planning process, et cetera.

14 The final column indicates the type of
15 effects and effectiveness monitoring that will be
16 applied, so it indicates how effects and effectiveness
17 will be assessed as part of the monitoring program you
18 are going to hear about.

19 Table 3 starts on page 450. This table
20 summarizes similar information for the socio-economic
21 environment, keying in on the interests of a variety of
22 stakeholders. Again, you see very similar column
23 headings, except the left-hand column which identifies
24 a list of the stakeholders potentially affected by
25 timber management.

1 Tables 2 and 3 are based on both the
2 scientific literature that exists and on the experience
3 of Ministry staff with managing for those values.

4 I want to turn now to page 4 of Exhibit
5 933, the next overhead. As I have indicated,
6 guidelines had been developed to protect non-timber
7 values from the potential effects that are summarized
8 in the tables. And the monitoring program for
9 non-timber values aims to improve our understanding of
10 these effects and to assess the effectiveness of the
11 guidelines and other directions we have developed to
12 deal with those effects.

13 At both local and provincial levels, the
14 monitoring program has been designed to be
15 comprehensive, deliverable and adaptive. In discussing
16 first the provincial program and then later the local,
17 we will be careful to define what it is we mean by
18 those terms in relation to the program we are talking
19 about, but in many ways these are some of the criteria
20 against which we would judge the success of the
21 program.

22 I want to turn to page 5 of that same
23 exhibit and begin to talk about the provincial effects
24 and effectiveness monitoring program. The first
25 question we need to ask is: Why do we need a

1 provincial effects and effectiveness monitoring
2 program? And there are at least three problems that
3 led the Ministry to develop the program.

4 The first of these is that many of the
5 effects we are concerned about are difficult to detect
6 and measure. The reasons for this difficulty includes
7 the complexity of the ecological, social and economic
8 processes that link timber management activity to the
9 effects; for example, the number of fish reared in a
10 stream can be affected by changes in acidity, oxygen
11 levels, temperature levels, the amount of large organic
12 debris in the stream, turbidity in the stream, food
13 levels, et cetera. And it is important to sort out
14 what it is that's causing the change we are observing
15 so that we can begin to modify the guidelines in
16 appropriate ways.

17 The second reason for the difficulty is
18 that many of the things we want to measure vary from
19 day to day, from week to week, from season to season,
20 so it is difficult to detect the effect of a change
21 that's related to timber management from the background
22 variability in many of the measurements we want to
23 make. An example would be oxygen levels in streams,
24 and there is a great deal of variability in time in the
25 levels of oxygen that are measured in those streams,

1 and trying to detect a change that's in those levels
2 that's related to timber management, requires quite
3 specific expertise and equipment.

4 It is also difficult to detect timber
5 management effects when more than one process can cause
6 the same observed change; for example, both timber
7 management and global climate change can cause changes
8 in stream temperatures which would affect fish
9 populations.

10 The difficulty in detecting effects means
11 that we will need strong scientific standards if we are
12 going to sort out effects and effectiveness of timber
13 management actions. The reliability of the results of
14 the program is critical if we are going to modify our
15 guidelines.

16 The third problem that we face is the
17 cost of the monitoring that's required. Given the
18 difficulty with detection and the need for strong
19 science, it would be impossible to develop the studies
20 needed at each district in the area of the undertaking.

21 The solutions we proposed to deal with
22 these problems balance strong science with a practical
23 approach, so we focused on careful experimental designs
24 to be delivered by research scientists and specialists
25 in the Ministry in a coordinated set of studies. And

1 we will deliver this program through a practical
2 approach that focuses on representative sites so that
3 we can extrapolate the results.

4 I want to turn back now to providing some
5 sense of what it is we mean by comprehensive,
6 deliverable and adaptive and start with page 6 in
7 Exhibit 933.

8 The provincial components of the program
9 are comprehensive in that they address all of the
10 non-timber values that are normally considered in the
11 timber management planning process. And there are
12 seven components to the program: tourism, heritage,
13 aquatic, moose, deer, and both a featured species
14 sub-component and a population monitoring sub-component
15 to other wildlife.

16 The components are managed as a set to
17 take advantage in efficiencies and where the studies
18 are conducted in order to integrate results when that
19 makes sense and to avoid duplication in the committees
20 that are needed for project control. So there are two
21 things we want to talk about in a little more detail
22 later. Firstly, how do we propose to manage these
23 components as a set; and, secondly, the objectives,
24 approach and status of each of the components.

25 Turning to page 7 of the exhibit. The

1 monitoring -- the provincial monitoring program has
2 also been designed to be deliverable, to provide
3 reliable results through a practical program, to ensure
4 high -- the highest practical scientific standards and
5 to have clear responsibilities and relationships for
6 reporting.

7 The provincial program is considered by
8 the Ministry to be mandatory, as we referred to in the
9 draft term and condition No. 52 and in our response to
10 the Ministry of Environment's Interrogatory No. 1.

11 Funding has been provided to initiate the
12 provincial program, and you will be hearing more about
13 funding from Mr. Gordon at the end of the discussion of
14 Document No. 3.

15 What we would like to do in talking about
16 managing components as a set and telling you about the
17 status of each of the components is show you how we
18 designed the provincial monitoring program to be
19 deliverable. Turning to page 8 of the Exhibit 933.

20 THE CHAIRMAN: Excuse me. What condition
21 did you refer to that it was mandatory in your
22 conditions?

23 MS. MURPHY: Condition 52, Mr. Chairman.

24 THE CHAIRMAN: 52.

25 MS. MURPHY: That was the one I referred

1 to earlier this morning and asked you to add some
2 words.

3 THE CHAIRMAN: Oh, right. Okay.

4 DR. MacLEAN: We have also designed the
5 provincial program for non-timber values to be
6 adaptive, to learn about effects and effectiveness by
7 doing timber management and to modify timber management
8 based on what we and others learn.

9 We talked in previous panels about the
10 importance of adaptivity in program and planning
11 procedures before, but here we want to outline the
12 processes and mechanisms that we put in place to
13 capture and review what we learned to ensure that
14 management changes, if necessary, as we learn, and
15 finally to provide stakeholders with the opportunity to
16 participate in decisions about the program.

17 Given the level of uncertainty we have
18 about effects and effectiveness, it is likely that we
19 will want to change how we go about protecting
20 non-timber values over the next several years. So we
21 want to talk to you about how we plan for those
22 changes.

23 And to outline the remaining part of the
24 discussion on the provincial program, we will be first
25 talking about the management of the provincial program,

1 then providing you with an update on each component,
2 and finally returning to talk about mechanisms and
3 processes to ensure adaptivity.

4 And that's the end of my comments.

5 MS. MURPHY: I would suggest what we do
6 at this stage is ask Mr. Gordon to discuss the
7 management of that program and then I would suggest,
8 before we go on to deal -- that we take the break
9 before we go on to deal with each piece and then come
10 back and do that in the morning.

11 THE CHAIRMAN: Very well.

12 MS. MURPHY: Okay.

13 MR. GORDON: What we are putting in place
14 to manage the provincial program is a series of
15 committees.

16 MS. MURPHY: And you might have to speak
17 up if you don't have a microphone, the reporter has to
18 hear you.

19 MR. GORDON: Okay. What we are putting
20 in place is a series of committees to manage the
21 provincial program and provided an initial outline of
22 this committee structure in the answer to the
23 interrogatory from NAN, No. 9.

24 Overseeing the total project will be a
25 steering committee, that committee will have

1 representatives from four ministries: MNR, MOE, MN&DM
2 and MTR. The chair of that committee will be Larry
3 Douglas.

4 Reporting directly to the steering
5 committee will be both a stakeholder committee and a
6 planning committee, and I will come back and give you
7 some more details about those in a moment. And then
8 feeding information and getting direction from those
9 above committees will be a number -- or will be the
10 study areas within those study projects and those
11 project areas there will be some technical committees.

12 Going to page No. 10 of Document 933, we
13 have a summary of the responsibilities of the steering
14 committee. Very clearly, they will be approving
15 staffing and budget proposals and they will give final
16 approval to the research proposals once they are
17 designed. And as we learn and pick up information and
18 develop the idea that perhaps there should be changes
19 to the guidelines, that committee will make
20 recommendations to the deputy of MNR to revise the
21 guidelines.

22 One of the committees that I showed you
23 on page No. 9 that reports directly to the steering
24 committee is the planning committee, and they provide
25 support to the steering committee, they play a

1 coordination role where, for example, we can achieve
2 cost efficiencies by doing some new coordination, that
3 is the responsibility of the planning team committee to
4 ensure that that happens.

5 Where we believe there is advantage in
6 conducting some workshops to facilitate the development
7 of study design or to bring forward the results of the
8 studies, the planning committee would also play a
9 coordinating role in that area. The planning committee
10 also will be reviewing the results of the projects,
11 they will be interacting with the stakeholder
12 committee, and they will be making recommendations to
13 the steering committee for changes to the guidelines.
14 This government committee will also be responsible for
15 audits -- operational audits of those various projects.

16 Going back to page No. 9. Again, you can
17 see where the stakeholders committee fits in. As I
18 said earlier, they report to the steering committee,
19 but, as well, they will be interacting with the
20 planning committee.

21 THE CHAIRMAN: Are the members of the
22 stakeholder committee representational only or are
23 those who you propose to be the members?

24 MR. GORDON: We have --

25 THE CHAIRMAN: Not the individuals, but

1 are those the stakeholder groups you intend to comprise
2 that committee, or is that just representational of the
3 various types of stakeholders that might be members of
4 that stakeholder committee?

5 MR. GORDON: We sent out a letter October
6 12th to those seven parties asking them to participate.

7 THE CHAIRMAN: Why just those seven?

8 MR. GORDON: In our estimation, we
9 believe that that is a representative stakeholder
10 group, we believe that the committee structure has to
11 be manageable, that you can have too large a committee.
12 You have to recognize as we proceed through the
13 exercise we will be, after consultation with the
14 stakeholder committee, hopefully having some workshops
15 which will allow the greater participation of other
16 stakeholder groups and, as well, MNR is open to any
17 stakeholder group that is not represented in that list
18 putting forward their reasons for wanting to
19 participate.

20 THE CHAIRMAN: Well, why, for example,
21 would the industry get two reps?

22 MR. GORDON: I suppose there are two
23 industry associations.

24 THE CHAIRMAN: True.

25 MR. GORDON: One tends to represent

1 groups of larger companies and the other group, the
2 Lumbermen's Association, tends to represent smaller
3 operations, so there is quite a difference in types of
4 operations in general.

5 MS. MURPHY: Q. Excuse me, those were
6 shortforms on there and there was one I was not
7 familiar with. What is OTA?

8 MR. GORDON: A. That's the Ontario
9 Trappers Association.

10 And for your information, Mr. Chairman,
11 at this point in time we have confirmation that NOTOA,
12 FON and the two industry associations will participate.

13 THE CHAIRMAN: Okay. But what about all
14 of the other groups, for instance, making up the
15 coalition which Ms. Swenarchuk represents, as an
16 example?

17 Now, the Federation of Ontario
18 Naturalists is in there.

19 MR. GORDON: That's correct.

20 THE CHAIRMAN: I believe that's one of
21 those groups, if I am not mistaken. What about some of
22 the others, for instance?

23 MR. GORDON: All I can say to that is if
24 one of those groups feels that they should be on that
25 committee, then it would appropriate for them to come

1 forward and present their case.

2 THE CHAIRMAN: Okay. I guess the
3 difficulty the Board is having is sending a notice or
4 invitation to named groups to participate without other
5 groups knowing, for instance, that there is an
6 opportunity to participate or at least an opportunity
7 to make a case why they should participate, you are
8 making the arbitrary choice up front as to who you
9 think is representative of who should be on that
10 committee, and you are leaving the onus on anybody else
11 to (a) know that you are setting up the committee, and
12 know that they might have an opportunity to try and get
13 on that committee.

14 And you are just making an - I won't say
15 arbitrary, you are probably addressing your mind to the
16 various types of stakeholder groups - but you are
17 making an arbitrary determination as to who supposedly
18 in the first instance should get an invitation.

19 MR. GORDON: I can understand that. I
20 suppose what I could say right now is I can take your
21 comments under advisement.

22 MS. MURPHY: Q. But, in any event, if
23 you were going to do that you would still be just
24 expanding the list and still drawing the line at some
25 point?

1 MR. GORDON: A. That's correct.

2 THE CHAIRMAN: Yes. And there may be
3 valid criteria upon which to draw the line. It is just
4 a matter of, obviously this is an important committee
5 in the monitoring process because they are the only
6 committee essentially that represents non-government
7 persons or affected groups?

8 MR. GORDON: To some degree you are
9 correct there. When I get to the technical committees,
10 what I will also be explaining there is obviously there
11 there are technical experts outside of government.

12 THE CHAIRMAN: Right.

13 MR. GORDON: And there will be
14 participation in that way also.

15 THE CHAIRMAN: But these are the impacted
16 groups by the activities and the unsuccessful results
17 that may occur from activities which are not done
18 appropriately or conducted appropriately?

19 MR. GORDON: That's correct.

20 THE CHAIRMAN: And so, therefore, I would
21 suggest it becomes important to those stakeholders to
22 ensure that their interests are somehow represented in
23 terms of this committee. And I haven't got an easy
24 answer as to how you restrict or cut down the committee
25 to a manageable size and yet at the same time ensure

1 that there is fairness and that all of the
2 representative stakeholder groups are in some way
3 represented or at least consent to somebody else
4 representing their interests.

5 And that's a tough call. But I'm not
6 sure that just by sending out seven or eight
7 invitations that's the way to go about it. I guess
8 that is all the Board wants to comment on.

9 MS. MURPHY: And given that it is a tough
10 call, this information of course is available at least
11 to the 50 parties who are parties to this hearing, I
12 would suggest.

13 MR. MARTEL: But there is a group that
14 right from the beginning have been left out of every
15 aspect of harvesting, access, that I know of.

16 Nowhere have I seen any reference to the
17 workers in those industries, not management, but the
18 workers. I haven't seen a thing yet that includes the
19 people who are engaged in the resource extraction
20 industry in Ontario involved in any way, shape or form.

21 MS. MURPHY: Actually, Mr. Martel, and I
22 can't give you the exact citation right now, but I
23 think you will find that - I can't remember the name of
24 the union - but I think you will find that they are on
25 the groups that have been given notice of this

1 environmental assessment and so forth.

2 MR. MARTEL: I understand that.

3 MS. MURPHY: And it hasn't been exactly
4 left off.

5 MR. MARTEL: I understand that. I am
6 simply saying, I have looked carefully as we have gone
7 along and there is reference, but the people who are
8 really as much involved as anybody else is the people
9 who actually make up the workforce.

10 I am not necessarily thinking a union
11 representative either, I am saying the people who are
12 directly involved, nowhere. There is opportunity maybe
13 to invite them through some mechanism to participate in
14 some of these things.

15 MS. CRONK: Sir, without commenting on
16 the issue of the constituency of this or any other MNR
17 committee, I can assure you that when you ultimately
18 hear evidence from our clients you will be hearing from
19 some of those who are actively doing the work.

20 But beyond that, I would also suggest
21 that perhaps it would be at this stage appropriate to
22 assume that when representatives of companies in the
23 forest industry are selected to serve on one committee
24 or another, it might well turn out to be the evidence
25 that they are peer selected, that they are not

1 necessarily appointees of corner offices and in many
2 situations the people are a representative spokesman of
3 the group actively involved.

4 MR. MARTEL: Well, that might be right.
5 I simply make the point, up to this time I haven't seen
6 any input or any involvement of that group, and it's a
7 concern I have because they do make up the majority of
8 the people in this area of the world, if I can use that
9 term -- not the majority, but a large number.

10 MR. GORDON: Mr. Chairman, can I take
11 both your comments and Mr. Martel's under advisement.

12 THE CHAIRMAN: Yes. Appointment to these
13 committees is something that sort of strikes us as:
14 How do you get to that group, how are they chosen, and
15 how best can you design something to make it as
16 representative as possible and yet manageable.

17 That's a tall order. I'm not sure you
18 have done it and we can't suggest at this stage how you
19 should do it, so we will let you think about it some
20 more.

21 MS. MURPHY: That's fine.

22 THE CHAIRMAN: That doesn't mean at some
23 stage we won't suggest how you should do it.

24 MR. GORDON: I just want to make it very
25 clear that the participation of the stakeholder

1 committee is important and it is considered important
2 by MNR.

3 THE CHAIRMAN: Okay.

4 MR. GORDON: Going directly to the
5 stakeholder committee: What are their responsibilities
6 as presently outlined? They provide advice and
7 recommendations directly to the steering committee,
8 participate in study design, participate in the
9 evaluation and communication of results, and review
10 project results with a special emphasis on implications
11 for the guidelines and planning procedures and make
12 recommendations to the steering committee, as does the
13 planning committee.

14 As I said earlier, we have invited seven
15 parties based on the letter of October 12th. We are
16 hoping that if at least those seven parties will
17 participate that we will have the first meeting of the
18 planning committee before Christmas; again, the
19 stakeholder committee before Christmas.

20 What you have to recognize is that we are
21 going to be going through a very lengthy process as we
22 go through this provincial effects and effectiveness
23 monitoring program. And what we have done to the best
24 of our ability is outline the committee structure and
25 responsibilities that we think will get us off the

1 mark.

2 And very clearly over time it will
3 evolve, there will be changes and, for example, at
4 certain times it will be appropriate that the planning
5 committee and the steering committee are in the same
6 room meeting together, discussing the same issues, and
7 sometimes it may be appropriate for one of those
8 committees, the stakeholder committee, to meet
9 one-on-one with the steering committee.

10 Relative to the project technical
11 committees, I will show you the relationships in a
12 moment. The purpose of these technical committees is
13 to ensure that the project scientific design is to the
14 highest standards, and when information starts flowing
15 out of the projects they review this information and,
16 as well, as we produce reports that will be available
17 to the public relative to the information we are
18 finding out, there basically will be a peer group
19 review to ensure that those reports are of high
20 scientific standard, and we will be also asking the
21 players in the technical committees to participate in
22 any workshops that may take place throughout the 10
23 years or whatever that we are in this program.

24 Going back to page No. 9. There is the
25 overall relationship of the committees and what I would

1 like to do now is go down to the technical committees
2 which is outlined on page 14.

3 When we sent out our answer to NAN 9, we
4 identified three project areas. Each one of those
5 project areas had a technical committee and we had a
6 tourism project, an aquatics project and a moose
7 project, and already things are starting to evolve.

8 In our letter of October 12th to the
9 seven groups that we would like to participate in this
10 program, we pointed out to them that there is a strong
11 possibility that we would want to bring at least the
12 population monitoring project under the umbrella of
13 this committee structure.

14 We had a planning committee meeting on
15 October the 20th, the first one of that group, and as a
16 result of that meeting recommended that we bring two
17 project areas under the umbrella of this committee
18 structure. So we have added the featured species
19 project, which you will hear about later from Dr.
20 Euler, and the population monitoring project, which I
21 believe Dr. Euler will also discuss.

22 We are hoping to bring those two
23 committees under the umbrella of the committee
24 structure; however, we will be bringing this idea
25 forward to the stakeholder committee and asking for

1 their support.

2 Again, I would like to just re-emphasize
3 that this is our best shot at getting things off the
4 mark and we recognize things will evolve, committee
5 structure may change, relationships may change and we
6 believe and we are trying to have a fairly open
7 process.

8 THE CHAIRMAN: Okay. And at this point,
9 if I understood you correctly, you have three responses
10 from the seven invitations that you --

11 MR. GORDON: Four.

12 THE CHAIRMAN: Four out of the seven who
13 want to take part?

14 MR. GORDON: That's correct.

15 THE CHAIRMAN: At this point.

16 MR. GORDON: And to be fair to the other
17 parties, it was a fairly short turnaround time of two
18 to three weeks, so I am not concerned at this point in
19 time that three of the parties have not responded yet.

20 THE CHAIRMAN: Okay.

21 MS. MURPHY: And since it has been
22 referred to a couple of times, we should probably file
23 that letter of October 12th, 1989. I only have one
24 copy.

25 THE CHAIRMAN: Could we ask out of

1 curiosity who the parties are that have responded and
2 are at this point taking part?

3 MR. CASSIDY: I thought that was already
4 given in evidence, Mr. Chairman.

5 MS. MURPHY: Yes.

6 MR. GORDON: I can repeat that.

7 THE CHAIRMAN: I'm sorry, I missed that.

8 MR. GORDON: The FON is committed--

9 THE CHAIRMAN: Yes.

10 MR. GORDON: --and I believe their
11 representative will be Don Huff; NOTOA has committed
12 and their representative would be Mr. Chambers; and the
13 OFIA and OLMA have committed and I don't have the exact
14 name of their representative yet.

15 THE CHAIRMAN: Thank you.

16 MR. GORDON: And I will go away and do
17 some thinking, sir.

18 MS. MURPHY: And perhaps what I will do
19 is bring copies of this tomorrow to file, I only have
20 one with me right now. And this would be an
21 appropriate time for the end of the day.

22 THE CHAIRMAN: Okay. Thank you, Ms.
23 Murphy.

24 Ms. Cronk, we are not going to deal with
25 this matter today, I take it, this other matter?

1 MS. CRONK: For my part, sir, I have been
2 unable to get instructions. So as it happens, that's
3 fine.

4 THE CHAIRMAN: All right.

5 MS. CRONK: I do expect that I will be in
6 the position, however, to advise you of our position
7 first thing in the morning.

8 THE CHAIRMAN: Very well. Secondly, the
9 Board would just like to remind the parties that we
10 have arranged for Mr. Turkstra to attend on the evening
11 of November 15th. He is committed to a trial for both
12 the 15th and 16th - we were considering the morning of
13 the 16th as well - and he will be unable to get up here
14 we believe until late in the day and we are, therefore,
15 going to, if necessary, hold the scoping session for
16 the Baskerville evidence that evening.

17 We don't anticipate it should take more
18 than an hour, but we may not be able to hold that
19 session until perhaps as late as eight o'clock or 8:30
20 in the evening. We want him here for that session, we
21 feel it would be well worth everybody's time for him to
22 be available because he will be the one that will be
23 leading that evidence.

24 Thank you. We will adjourn until
25 tomorrow at 8:30.

1 MS. MURPHY: 8:30 or eight o'clock
2 tomorrow?

3 THE CHAIRMAN: Oh, perhaps we will start
4 at eight tomorrow in order to make sure we finish.

5 MS. MURPHY: Yes, I think that would be
6 wise.

7 THE CHAIRMAN: Very well.

8 ---Whereupon the hearing adjourned at 5:35 p.m., to be
9 reconvened on Thursday, November 9th, 1989,
commencing at 8:00 a.m.

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DRAFT

ENVIRONMENTAL ASSESSMENT BOARD

Proposed Class Environmental Assessment by the
Ministry of Natural Resources for Timber Management
on Crown Lands in Ontario

IN THE MATTER OF sections 5(1), 12(2) and 13(3) of the
Environmental Assessment Act, R.S.O. 1980, c. 140;

- and -

IN THE MATTER OF the Class Environmental Assessment of
the undertaking of Timber Management on Crown Lands in
Ontario as administered by the Ministry of Natural
Resources.

PROCEDURAL DIRECTIVES

On October 3rd the Board served notice upon the parties to this hearing that it was dissatisfied with the progress made to date in terms of expediting the hearing of evidence and the continued lack of focus upon issues in dispute.

This concern was further exacerbated when the Board, after requesting and receiving submissions from counsel representing parties participating on a full-time basis as to their estimates of the time required for each of the parties in support of or in opposition to this application to put their respective cases before the Board, learned that, on the basis of those estimates, this hearing could last until mid 1992, provided that the Ministry of the Environment elects not to present its own evidence, with additional time required to enable the Board to write and issue its decision.

The Board has categorically stated that it finds this projected timetable totally unacceptable and contrary to the public interest, and directed counsel to provide the Board with specific and detailed proposals designed to expedite these proceedings for its consideration, which would then form the basis for further procedural directives to be issued by the Board. A full discussion of these proposals took place at a session devoted entirely to procedural matters held at the Board's offices in Toronto on October 17th, 1989 and draft procedural directives were issued on October 25th, 1989. Further submissions were heard by the Board on October 31st, 1989.

i) Presentation of Direct Evidence

The Board is of the view that two days should be more than sufficient time for any party to highlight or elaborate upon evidence which is essentially contained within written witness statements submitted well in advance of the panel being examined. Accordingly, the Board shall, commencing with the Ministry of Natural Resources Panel XVI evidence, limit the presentation of direct evidence to a maximum of two hearing days for each witness panel.

Leave of the Board shall be required in the event that the two day time limit is to be exceeded, and leave shall not be granted unless the party seeking leave can show just cause.

As the parties are aware the Board has considered, but declined in the past, to impose a time limit on the presentation of direct evidence; however, has decided to do so at this juncture and is not persuaded that any unfairness to any of the parties will result. Although MNR has exceeded the two day limit up to this point in the hearing, the time taken up in cross-examination has by far occupied the majority of the time required to complete the examination of each panel, and thus all parties have had ample opportunity to clarify and test the evidence put forward by the Ministry.

ii) Draft Terms and Conditions -
Implementation of a Formal Negotiating Process

In its continuing efforts to focus the resources and efforts of the parties to resolving the issues in dispute, the Board in its procedural directives dated September 16th, 1988 specified that the Ministry of Natural Resources, as well as other parties participating on a full-time basis, provide draft terms and conditions of approval which the Board might impose in the event that approval of the Ministry's application is granted.

The submission of draft terms and conditions of approval is not something new in terms of Board procedure; however, it is more usual for the same to be provided at the end of the case either prior to or during argument. In this instance the Board felt it would materially assist both it and the parties to have the positions of MNR and all other full-time parties specifically delineated at a much earlier stage in the hearing process.

In accordance with the Board's earlier procedural directives, MNR's draft terms and conditions were filed on June 27th, 1989 as Exhibit 700.

Under the terms of these earlier directives all other parties are required to deliver draft terms and conditions by the conclusion of MNR's case, which is now estimated to conclude on or about February 15th, 1990.

It was a further condition of the Board's earlier directive dated September 16th, 1988 that all proposed terms and conditions may be submitted on a "without prejudice" basis and may be subject to later revision, should the same be necessary.

The Board has concluded that all parties are now in a position of knowing the essential aspects of the Ministry's case and are aware of the principal areas of dispute. In the Board's view, all parties should be able to set out with some particularity draft terms and conditions which reasonably reflect a particular party's position vis-a-vis MNR's application before the Board.

The Board hereby directs that a period of two weeks be set aside for the purpose of allowing the parties an opportunity to conduct intensive negotiations directed towards reaching agreement on the issues raised concerning the undertaking before the Board. It is during this period of negotiation that all of the full-time parties will be expected to examine each of the specific terms and conditions put forward by each party and to negotiate in good faith with the express goal of reaching a commonality of position or agreement on as many issues as possible, while at the same time identifying all outstanding issues in dispute.

In order to assist the parties the Board hereby directs that the negotiations referred to herein be conducted in accordance with the following provisions:

- (a) All parties participating on a full-time basis shall file and distribute to all other parties receiving full-time correspondence draft terms and conditions on or before January 30th, 1990.
- (b) The terms and conditions referred to in subparagraph (a) shall to the best of that party's ability represent the party's position with respect to the issues involved. The Board recognizes that some positions may change as a direct result of the negotiating process, and accordingly encourages all parties to be reasonable and flexible in their approach.
- (c) The Board shall adjourn the hearings for the purpose of hearing evidence for a two week period commencing February 19th, 1990. Counsel or representatives for all parties participating on a full-time basis shall be required to attend and participate in intensive negotiations at a location to be decided upon by the parties.

The report to the Board referred to in subparagraph (d) shall set out the names of all participants and shall include reference to the dates and duration of all negotiating sessions held.

(d) On or before April 3rd, 1990 a written report shall be filed with the Board detailing the results of the negotiating process which shall set out, inter alia, the following:

- i) Those issues upon which the parties have reached agreement and, where applicable, the precise suggested terms and conditions relative to those issues.

In the event that not all parties have reached agreement on a specific issue then reference will be made to those parties who do not agree, and their respective positions with respect to the particular issue in question shall be set out in detail.

Where parties signify in the report to the Board that a particular issue is not in dispute, then that party shall not address that issue during its presentation of oral direct evidence unless otherwise directed by the Board. This shall not preclude the party from addressing the issue in the witness statement if it so desires; however, the Board shall not permit cross-examination by other parties who have signified that a particular issue is not in dispute.

- ii) Those issues where the parties have been unable to reach agreement and may therefore be characterized as issues in dispute.

These issues will be dealt with in the normal fashion with the parties calling direct evidence subject to the time limitation set out above, and parties opposed in interest having the right to cross-examine.

- iii) All parties who have filed draft terms and conditions on or before January 30th, including MNR, shall be required to finalize their terms and conditions and file revised terms and conditions on or

before April 3rd, 1990, if changes to their earlier stated positions have resulted by reason of the negotiating process.

Thereafter parties will only be permitted to further amend terms and conditions with leave of the Board.

- iv) For the purposes of these procedural directives, the phrase "terms and conditions" shall encompass amendments sought by a party with respect to the principal documents put forward by the Ministry of Natural Resources in support of its class environmental assessment, including but without limiting the generality of the foregoing, the Class EA document (Exhibit 4) and the Timber Management Planning Manual.

iii) Scoping of Issues

The Board adopts the proposals put forward by the parties designed to tighten up the scoping procedures previously established by the Board.

- a) Any party not filing a Statement of Issues within the time limits specified by the Board shall require leave of the Board before being permitted to cross-examine on that panel. Leave shall not be granted unless the party requesting leave has specifically identified relevant matters which it intends to raise in cross-examination.
- b) Failure to request leave to cross-examine a panel within one week after the date of the scoping session for which the party failed to submit its Statement of Issues shall be deemed to constitute a waiver of the opportunity to cross-examine that panel.
- c) Parties who wish to cross-examine upon issues identified in their Statement of Issues shall wherever possible focus their cross-examination by specifically relating the same to positions put forward in the draft

terms and conditions filed by MNR and/or the party cross-examining or being cross-examined.

- d) The Board may at the scoping session designate lead counsel to cross-examine in situations where more than one party wishes to cross-examine with respect to the same issues, in order to prevent undue repetition. Where appropriate the Board intends to exercise its powers under s. 18(15) of the Environmental Assessment Act and s. 23(2) of the Statutory Powers Procedure Act.

iv) Relocation of Parts of the Hearing

Counsel for Forests for Tomorrow put forward a proposal for the Board to reconsider its earlier decisions concerning the location of the hearings following the completion of the Ministry's case.

It was suggested that by relocating the hearings to Toronto and increasing the hearing schedule to four days per week, a considerable savings in both time and hearing costs would be effected, although it was recognized that some reallocation of monies provided by way of intervenor funding to some of the funded parties might become necessary.

At the request of the counsel for OFIA/OLMA the Board agreed to defer submissions with respect to this matter until October 31st, 1989.

The Board after giving careful consideration to the submissions of the parties has decided to adopt counsel for OFIA/OLMA's proposal to relocate part of the hearings relative to the presentation of the Industry's case to Toronto.

The Board therefore directs that:

- i) The evidence with respect to the first two (2) witness panels shall be presented in Toronto at a location to be named by the Board.
- ii) The evidence with respect to the next five (5) witness panels shall be presented in Thunder Bay.

- iii) The evidence with respect to the final three (3) witness panels shall be presented in Toronto.

The hearing location for the presentation of the evidence by all other parties shall for the time being remain as previously determined.

The Board shall notify the Funding Panel established for the purpose of allocating intervenor funding of its decision with respect to the relocation of part of this hearing as set out above and request the Funding Panel to consider reallocation of travel expenses if it deems the same appropriate.

In the event that these measures prove to be ineffectual in substantially shortening these proceedings, and in particular if the negotiation process referred to above fails to assist materially in this regard, then the Board is prepared to impose stringent time constraints upon all parties with respect to all future cross-examination.

The Board will take this step, if necessary, upon being satisfied that all of its efforts to date have essentially failed to improve the productivity and efficiency of the hearing process.

Dated at Thunder Bay this 8th day of November, 1989.

Michael I. Jeffery, Q.C.
Chairman

